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THE 1980 GENEVA SESSION AND STATUS OF THE NEGOTIATIONS ON THE LAW OF THE SEA

CONTENTS

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HEARING

BEFORE THE

COMMITTEE ON FOREIGN AFFAIRS

HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

SECOND SESSION

OCTOBER 1, 1980

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(11)

WITNESS

Ambassador Elliot L. Richardson, Special Representative of the President and Ambassador at Large for the Third United Nations Conference on the Law of the Sea.....	Page 2
APPENDIXES	
1. U.S. delegation report: Resumed Ninth Session of the Third United Nations Conference on the Law of the Sea, July 28-August 29, 1980, Geneva.....	23
2. Part III of the draft convention, excerpt of language regarding procedures for sealane security, submitted in response to inquiry by Representative Paul Findley.....	66

(III)

READER

THE 1980 GENEVA SESSION AND STATUS OF THE NEGOTIATIONS ON THE LAW OF THE SEA

WEDNESDAY, OCTOBER 1, 1980

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FOREIGN AFFAIRS,
Washington, D.C.

The committee met, at 10:30 a.m. in room 2172 of the Rayburn House Office Building, Hon. Clement J. Zablocki (chairman) presiding.

Chairman ZABLOCKI. Mr. Bingham is going to preside temporarily at least.

Mr. BINGHAM. The committee will please come to order.

This morning the committee welcomes once again Ambassador Elliot L. Richardson, the Special Representative of the President and Ambassador at Large for the Third United Nations Conference on the Law of the Sea. Mr. Ambassador, we are glad to have you here to discuss with us the status of the negotiations of the Geneva session of the Conference. Since you briefed us last May on the New York spring session of the negotiations, the committee reported the Deep Seabed Hard Mineral Resource Act, as you know, and subsequently the Congress enacted it into law. Now, I understand that the executive branch is preparing rules and regulations to implement that act.

Even though this committee has discharged its legislative responsibility for the Seabed Hard Mineral Resource Act, at least for the time being, the committee remains interested in the successful conclusion of a treaty on the Law of the Sea that is in the U.S. interest.

I understand that the Geneva session which concluded at the end of August resolved several major outstanding issues. Even Secretary General Kurt Waldheim has referred to the encouraging progress of this session in his Annual Report to the General Assembly. Your steadfast and patient efforts over the last 3½ years in the highly complex task of negotiating the successful conclusion of the treaty is very much appreciated. We look forward to your report on the Geneva session. You may proceed in any way that you wish.

I might say that the chairman is next door meeting with the Prime Minister of Papua New Guinea and will be with us shortly. Will you proceed please, Mr. Ambassador.

STATEMENT OF AMBASSADOR ELLIOT L. RICHARDSON, SPECIAL REPRESENTATIVE OF THE PRESIDENT AND AMBASSADOR AT LARGE FOR THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA

Ambassador RICHARDSON. Thank you, Mr. Chairman. It is a pleasure again to have the opportunity to brief this committee on the work of the Law of the Sea Conference. I appear here this morning accompanied by my Deputy Ambassador George H. Aldrich, seated on my right, and the Legislative Congressional Relations Officer of the Law of the Sea Office, Mr. Robert C. Blumberg, on my left.

All members of the committee, Mr. Chairman, have copies of our delegation report which is preceded by a summary of the work of the resumed ninth session of the Law of the Sea Conference held in Geneva between July 28 and August 29. The remainder of the report goes into considerable detail in recording the results of the negotiations in Geneva.¹

The single most important statement to be made about the Geneva session is that it concluded with very little left to be done at the 10th session, which has been scheduled for March 9 to April 17, 1981, with the possibility of extension for an additional week.

It had been hoped, as you know, that the Conference would completely conclude its work in Geneva leaving only a signing ceremony to be held in Caracas sometime in 1981. While that goal was not fulfilled, nevertheless, most participants left Geneva believing that the Conference could and should conclude its work at the 10th session.

That belief is based, as I noted a moment ago, on the fact that so few issues remain still to be dealt with. Only four have been generally recognized as requiring additional work. Three of them are problems not central to the Law of the Sea Conference text itself, but involve procedurally oriented matters.

These are generally known as the three P's: Participation, the Preparatory Commission, and preparatory investment protection. The issue of participation is essentially the issue of what countries or entities will be allowed to become parties to the treaty. Under that heading arises questions with respect to participation by the European community, by such associated States as those being formed from the Trust Territories of the Pacific Islands and by liberation movements such as the Palestine Liberation Organization. The Preparatory Commission would be a body established after signature and before entry into force of the treaty in order to take steps necessary to create the institutions that would be established by the treaty. The critical functions of the Preparatory Commission include the design of the administrative structure of these institutions and most important of all, the preparation of the rules, regulations, and procedures of the future International Seabed Authority.

The third of the three P's, preparatory investment protection, involves measures necessary to encourage seabed mining investment to go forward in the interval between signature of the treaty and its entry into force.

¹See appendix 1.

In addition to these procedural problems, there remains some additional negotiation to be done on the issue of boundary delimitation. The parties are close on that issue. The present text is acceptable to the United States and to many other countries but there remain disagreements over a few words which should be capable of resolution at the next session.

In addition to these substantial problems there remain a handful of less important but desirable improvements which we hope to be able to work out.

The most important accomplishments of the resumed session in Geneva, as our report indicates, concern the Deep Seabed Mining Regime. The new text provides for the decisionmaking procedures of the Council of the Seabed Authority and related matters and also contains improvements and clarifications of other provisions dealing with the system of exploration and exploitation, as well as with financial matters.

The voting issue had long been recognized as the single most difficult, outstanding issue. And at one stage, in the Geneva session the issue was, in fact, completely deadlocked.

The problem, as the committee is aware, was that of how to insure that important decisions could not be taken contrary to the interests of the States most affected, particularly the Western seabed mining and consumer nations. The deadlock was broken by a proposal to make decisions on the most sensitive issues subject to consensus. The issues that have in fact been made subject to consensus are those concerning production policies and limitations, adoption of rules, regulations, and procedures of the Authority, and the adoption of amendments to the seabed mining part of the convention, including the relevant annexes.

A critical element in this compromise is a provision of the final clauses stating that the draft rules, regulations, and procedures adopted by the Preparatory Commission shall apply, provisionally, from the date of entry into force of the convention, pending adoption by the Authority of permanent rules, regulations, and procedures.

The effect of this, therefore, is that once the rules, regulations, and procedures have been negotiated in the Preparatory Commission, we will be able, with confidence, to inform the Congress that these rules, regulations, and procedures will, in fact, take effect as the provisional rules, regulations, and procedures of the Authority from the day when it first opens its doors for business, and that changes in these will require our concurrence.

The remaining issues not subject to consensus are subject, in the case of the most important of these, to a three-fourths vote and the remainder to a two-thirds majority.

One of the related problems that had proven extremely stubborn and intractable in the past was the problem of action by the Council with respect to approval of contracts. An enormous amount of effort had gone into the formulation of criteria for the approval of plans of work and contracts with seabed mining entities, to assure that these criteria would be as objective and as nearly automatic as possible.

And obviously it would have destroyed this result had the Council, by an easily achievable majority, been able to prevent the

approval of a plan of work. This issue has now been resolved on the basis that if a plan of work has been approved by the Legal and Technical Commission, it then can be disapproved by the Council only by consensus, excluding from the consensus requirement the State sponsoring the contract, itself. That means, then, that one State other than the sponsoring State can prevent disapproval. That takes you then to the question of how the contract gets approved by the Technical Commission.

The Legal Technical Commission is a body whose function is intended to be professional. We were able to get a number of improvements in the text designed to emphasize the degree to which its function is to be carried out in a nonpolitical professional manner. As a compromise the question of voting in the Legal and Technical Commission will be left for later determination in the rules, regulations, and procedures of the Preparatory Commission. That means, in turn, that the United States will be in a strong position to influence that outcome, because, by the time the Preparatory Commission meets the participating countries will be aware that eventual ratification of the treaty by the United States will turn on the adequacy of these rules, regulations, and procedures.

The other parts of the seabed mining text dealt with in Geneva include, as I mentioned briefly, some improvements in the provisions with respect to financing the enterprise. There is no longer automatic liability for any shortfall in financing the enterprise resulting from the delay or failure of some States to ratify the convention. There have also been some improvements in other provisions regarding the financing of the enterprise, including the callup of funds as needed, default procedures, and improved repayment procedures.

With respect to the production ceiling, the so-called split-contracting system has been fully implemented throughout the text. And we were able to get general acceptance of a floor provision which assures that even in the event of a low-growth rate in nickel consumption there would still be substantial tonnage available to seabed mining companies.

The power of a commodity conference to decide the question of what production from the area the Authority will represent has been protected.

Finally, under this heading—seabed mining—the tax immunity provisions have been replaced by much better ones, virtually identical to those included in the recent Common Fund Agreement.

Turning, Mr. Chairman, from seabed mining matters to the text which deals with the substance of the Law of the Sea Conference in other areas, the second committee met only to consider drafting questions. There were no significant attempts to alter the substance of that text, and the substance is satisfactory to the United States.

The third committee, dealing with marine scientific research and the protection of the marine environment, also met only to consider drafting questions and that text is also on balance satisfactory to the United States as it stands.

There were some drafting changes improving the structure of the dispute settlement provisions and that text can also be considered complete.

The informal plenary has essentially completed the task of arriving at a set of final clauses that can command general agreement. The only one of these left open, as I noted earlier, is that of participation. The informal plenary also worked out compromises on a number of so-called general clauses, including clauses prohibiting abuse of rights or the use or threat of force in violation of the United Nations Charter. Another general clause protects classified information and still another provides for the protection of archaeological objects and objects of historical origin.

There was a good deal of work done in New York before the resumed session by the drafting committee. A number of drafting committee meetings were held in Geneva, but it is clear much more work still needs to be done. A session of the drafting committee has been scheduled for January 12 to February 27.

In the circumstances, Mr. Chairman, as I noted at the outset, it seems clear that the Conference should be able to conclude its work at the next session. There are the four substantive problems remaining outstanding as well as the necessity to approve the work of the drafting committee done during the intersessional period.

Once these remaining issues have been dealt with, the Conference will then convert the present draft convention—informal text—into a draft treaty which will make it subject to the rules of procedure of the Conference, regarding amendments, et cetera. That will be the stage at which there is a risk that the complex interlocking structure of compromises that are embodied in this draft convention may be shaken apart by amendments destroying the balance.

It will be critically important at that stage for the leadership of the Conference to remain united in opposing amendments that could have this effect.

Assuming that that perilous stage is successfully surmounted, the convention could then be open for adoption in New York and the Conference would schedule a session in Caracas later in the year where delegations would presumably make statements for the record and where the convention would be opened for signature.

That would then bring to an end an effort variously dated from 1967, 1969, or if you take the opening procedural session of the Conference itself, 1973. Many people during all these years have been skeptical that a conference of 155 or more sovereign States dealing with oil and gas, freedom of navigation, and overflight for commercial and military shipping and aircraft, marine scientific research, protection of the marine environment, the intense national interests that affect the conservation and management of fisheries resources and with the widespread concern so many people have with respect to the protection of marine mammals, could resolve all of these issues in a single document which would also create a new kind of supranational body charged with the management of deep seabed resources. That we have come so far is I think an extraordinary testimonial to the concern of delegations with the necessity to expand and extend the rule of international law.

Having come so far, I think that we would, with virtual unanimity, agree that the effort must not now be allowed to fail.

That concludes my overview, Mr. Chairman. I would be very glad to respond to questions.

Chairman ZABLOCKI. Thank you Ambassador Richardson. I want to apologize for not being here at the opening of the session to greet you. I had a prior commitment that ran over a bit in the anteroom.

You sounded a bit optimistic that there would be a Law of the Sea Treaty forthcoming. What would be your interpretation as to when you expect this to actually occur?

Ambassador RICHARDSON. I think that the Conference can and almost certainly will conclude its work in 1981, Mr. Chairman, subject only to the dangers intrinsic to the amendment stage. That would, then, mean that the United States would need to decide, in 1981, whether to sign the Treaty at Caracas, or, if not at Caracas, sometime after that.

My own view is that the ratifying stage in the Congress of the United States should be deferred until after the rules, regulations, and procedures have been prepared by the Preparatory Commission. It is generally supposed that the Preparatory Commission would require between 1½ and 2 years to complete its work. It probably would not be able to get started until early 1982, assuming that signature of the treaty occurs before the end of 1981.

That would mean then that we would have the rules, regulations, and procedures in hand sometime by the end of 1983 or early 1984; 1984, of course, will be a Presidential election year. This is an exceedingly complex document. So in the circumstances it would seem likely that the main ratifying effort would be put over until 1985.

Chairman ZABLOCKI. Mr. Ambassador, you mentioned the Preparatory Commission would prepare the rules and regulations and procedures. What will the membership of the Commission be, what will be the major issues in establishing the Commission, how long will it take for the Commission to complete its work? You say it may take a year or two to organize it?

Ambassador RICHARDSON. Well, it would take some time. I do not think it should take that long. The actual charter of the Preparatory Commission is one of the things that has been deferred for New York. A draft has been circulated. The U.S. delegation has reviewed it carefully and has developed its own suggestions for the draft.

Most of it is essentially noncontroversial.

You have put your finger on the one key issue that still needs to be resolved: That is the question of who will be allowed to participate or to be represented on the Commission?

The view of the United States is that only countries that have signed the treaty should participate, not countries that have merely signed the final act.

Assuming that this is the case, the Preparatory Commission should be able to get underway within, say, 6 months of signature of the treaty.

Chairman ZABLOCKI. Mr. Ambassador, I understand it takes 60 states of the 155 to ratify the convention in order for the convention to come into force. Is that true?

Ambassador RICHARDSON. That is correct.

Chairman ZABLOCKI. What effect would the provisions of the convention have on nonsigning states other than they would not be members of the Commission?

Ambassador RICHARDSON. That is a most important consequence, Mr. Chairman. I think we would regard as highly likely that other provisions of the treaty would take effect as customary international law, at least many of them, assuming that the treaty has otherwise come into force. There would be uncertainty as to what provisions of the treaty had been assimilated into customary international law, if it never came into force at all, and even if it does, there is, of course, room for argument on the part of nonsignatories as to what exactly they are bound.

But certainly the treaty would have major impact on the shaping of customary international law, in any case.

Chairman ZABLOCKI. Is there a specific language reference in the convention to the obligations of a nonsignatory nation?

Ambassador RICHARDSON. No, not that I am aware of.

Chairman ZABLOCKI. So if they do not sign they are not bound to anything?

Ambassador RICHARDSON. That is true, Mr. Chairman. One would only be bound to the extent that the provisions of the treaty are regarded as declaratory of customary international law. The treaty has already had a significant impact in that respect. The United States Fisheries Management and Conservation Act language had no foundation in international law except to the extent that certain of the concepts contained in the preexisting provisions on fisheries can be regarded as having already been assimilated into international law.

There will be issues with respect to the 12-mile territorial sea, archipelagic waters, passage through straits and so on.

Chairman ZABLOCKI. My time has run out Mr. Ambassador. I will ask just one further question, a short one, maybe it is even unfair to ask. It will take 60 nations to put the convention in force. Certainly there should be more. Do you anticipate there will be more than 60 that will ratify? Can you give a ball park number on the basis of their participation and cooperation in the Conference, that you expect would ratify the convention—of the 155, how many?

Ambassador RICHARDSON. It is very difficult, Mr. Chairman, to give you a confident estimate. Some countries may simply be slow in getting around to it. Others will have one or another difficulty that directly affects a specific national interest. But I would be hopeful that within 10 years the ratifications would be well over 100.

Chairman ZABLOCKI. Thank you, Mr. Ambassador.

Mr. Bingham.

Mr. WOLFF. Mr. Chairman, may I interject. Might I ask for the floor to introduce our guests who are sitting with us, the Deputy Prime Minister of Papua New Guinea, Foreign Minister and a

Member of the Parliament both of who, are very much interested in the Law of the Sea.

Chairman ZABLOCKI. We welcome them to the committee this morning and are pleased to have them join us.

Mr. BINGHAM. Thank you, Mr. Chairman.

The compromise that results in decisions being made by consensus—that is really quite extraordinary. Does that not in effect mean that decisions that require consensus must be unanimous?

Ambassador RICHARDSON. Yes. It means that the decision cannot be taken over the formal objection of any country.

Mr. BINGHAM. An advantage might be I suppose that countries might be opposed but not that much opposed that they want to register a formal objection, so they would keep quiet and let the consensus be announced by the Chair, is that—

Ambassador RICHARDSON. Yes, that is correct, Mr. Bingham. There is the further provision that where consensus has been precluded by one or more formal objections, then the Chair may appoint a conciliation commission to see whether the issue can be worked out. If it can, of course, that disposes of the matter. If not, the Commission then renders a full report as to its findings and efforts to achieve a reconciliation of views.

We believe that the provision for conciliation and for the submission of a report should serve to discourage arbitrary or frivolous objections or attempts merely to hold up the work of the Council.

Mr. BINGHAM. I was going to ask you about the kind of question I guess you probably receive from the press and you may not be able to give us a complete answer. But how at this point would you assess the chances of ratification by the United States?

Ambassador RICHARDSON. I think that question is close to the line. It is, I think, intrinsic to any negotiation like this that some very difficult bargains will have been made. It is impossible for either side in a relatively tough issue, or any side in the case of multilateral negotiations like this, to believe that the result will automatically commend itself to the folks back home.

The latter, in turn, not having been there and not having felt for themselves the force of the positions of the other side, are not easily able to grasp what it has meant to achieve what was in fact the final result.

It will take quite a lot of time and effort, I think for the outcome to be understood and I hope accepted, particularly with respect to deep seabed mining.

It is interesting to compare the reactions on the part of some of the critics of the results in the United States with the critics of the results in other countries. Their views are 180 degrees apart. To me that suggests that the bargain is probably about in the middle. And I think we could not have reasonably expected that it would come out anywhere else.

Mr. BINGHAM. I think in answer to one of the chairman's questions you suggested that a lot might depend on the way the future work is done with regard to the procedures to be followed by the Technical Commission.

Ambassador RICHARDSON. That is true, Mr. Bingham.

I certainly would not recommend ratifying unless the work of the Preparatory Commission on the rules, regulations, and proce-

dures comes out in a satisfactory way. This will have further advantage because it will preclude the worst case interpretations of general language that are often used now in order to criticize the results of the negotiations. It will be possible with the regulations in hand to answer these questions and to assure the questioner that the result cannot change in the future, except with our agreement, since future amendments of the rules, regulations, and procedures will require consensus.

Mr. BINGHAM. May I ask one more question, Mr. Chairman. Just briefly, what was the impact on this last session of the enactment of the law affecting the deep seabeds?

Ambassador RICHARDSON. Apart from the very forceful denunciations of our unilateral action at the outset of the session, it would be difficult to know just what the impact has been, except in the case of the issue I referred to earlier as that of preparatory investment protection.

This is the issue, as I mentioned, that concerns the means of protecting an investor, who moves ahead in the interval prior to entry into force of the treaty, from possible prejudice to his investment as a result of the later coming into being of the International Seabed Authority.

Here we probably did suffer some damage to the opportunity to negotiate a satisfactory outcome of that issue. But it has at least been recognized as a subject that will require further negotiation next time.

Mr. BINGHAM. Thank you.

Chairman ZABLOCKI. The gentleman from Illinois, Mr. Findley.

Mr. FINDLEY. Mr. Ambassador, is there any reference in the prospective language of the treaty to the International Court of Justice?

Ambassador RICHARDSON. Yes.

The International Court of Justice is one of the tribunals, Mr. Findley.

Mr. FINDLEY. Is it regarded as a primary tribunal?

Ambassador RICHARDSON. The parties, generally speaking, have a choice as to what tribunal they will choose for purposes of dispute settlement.

Mr. FINDLEY. Does the language of the treaty consent to jurisdiction of any particular tribunal?

Ambassador RICHARDSON. The parties may elect, under article 287, to bring disputes relating to the interpretation or application of the convention before the International Tribunal for the Law of the Sea constituted by the treaty, or the International Court of Justice, or an arbitral tribunal.

Mr. FINDLEY. Is there an obligation on the part of the signatory to submit to jurisdiction of one of those tribunals in the event of a dispute?

Ambassador RICHARDSON. There is, yes; parties must submit to one of them. And if they cannot agree either on the Law of the Sea Tribunal or the International Court of Justice they must accept the jurisdiction of an arbitral tribunal.

Mr. FINDLEY. I think that is a step forward, Mr. Ambassador. As you know, the papers have been full of talk about sealane security in the past few weeks and as you also know, Mr. Ambassador, we

have had discussions about ways in which sealane security can be enhanced. The language of the treaty will set forth, eventually, I assume, standards on procedures in sealanes and principles to be adopted and followed and steps by the signatory nations, is that correct?

Ambassador RICHARDSON. Yes, that is correct.

Mr. FINDLEY. Is that language presently in the public domain?

Ambassador RICHARDSON. Yes.

Mr. FINDLEY. I would appreciate having a copy of that and ask unanimous consent to insert it in the record.

Ambassador RICHARDSON. I would be glad to make it available.¹

Mr. FINDLEY. Mr. Ambassador, I was heartened by your comment at Geneva that you regard this as the most significant single event in the history of peaceful cooperation and the development of the rule of law since the founding of the United Nations.

Do you have any forecast as to the percentage of nation-states which ultimately will sign the treaty?

Ambassador RICHARDSON. As I said a moment ago, Mr. Findley, in response to a question by the chairman, it is difficult to be confident because of the extent to which it will be necessary for the individual countries to choke down one or more provisions that it really does not like. That is to say, virtually every country has for the sake of general agreement had to accept results considerably different from its initial preferences. And that makes the forecasting of the number of States that will be ratifying intrinsically difficult.

Nevertheless, I think when you take, together, the overall advantages to many countries, the opportunity that they can only have under the treaty to participate in the work of the International Seabed Authority or to share in the proceeds of seabed mining, and the general sense that the treaty represents a significant contribution to the rule of law, the result is likely to be, over the next decade, a high level of participation. I would certainly hope that it exceeded 100 countries by the end of the decade.

Mr. FINDLEY. It would surely be the objective of our Government to achieve the broadest possible support of the treaty, is that a fair statement?

Ambassador RICHARDSON. It certainly would, yes. We are hoping for the broadest possible support and the earliest possible date for the treaty to enter into force, assuming, of course, that we have signed it ourselves and have signified our own intention to ratify it.

Mr. FINDLEY. Are there any exceptions? I note there was some controversy over the interests of some of the Third World states in having the PLO as a signatory. Is there any objection to that from the standpoint of our Government?

Ambassador RICHARDSON. Yes, we strongly object to that. We strongly object to its signature by any entity lacking the power to fulfill the obligations of the treaty or to benefit from the rights conferred by the treaty. This would mean, then, that we would object to signature by any group that lacks governmental or State standing. We would accept on the other hand, a right of signature et cetera, by the European community provided that the clause under which it adheres to the treaty is properly framed. This is because the European community has been specifically given powers by its

¹ See appendix 2.

member countries in at least the area of fisheries and perhaps other areas.

Mr. FINDLEY. Mr. Chairman, would you permit just an observation.

Chairman ZABLOCKI. Without objection.

Mr. FINDLEY. Mr. Chairman, Mr. Ambassador, I realize you speak for the administration on this rather sensitive topic but it strikes me as rather curious that in this endeavor to enhance the rule of law and to bring all possible entities into the civilized condition that our Government would find it necessary to voice strong objections to adherence to a treaty by an organization that admittedly has very broad resources, including some resources at sea, therefore the potential for doing great damage; an organization that has been quite properly criticized on many occasions for deadly and destabilizing activity. And I see it as very curious and unfortunate that our Government would take that view of this opportunity.

Mr. GILMAN. Would the gentleman yield?

Chairman ZABLOCKI. The time of the gentleman actually has expired unless the Ambassador wants to comment.

Ambassador RICHARDSON. I would only add—

Chairman ZABLOCKI. That was just an observation on the part of the gentleman from Illinois.

Ambassador RICHARDSON. If I may, I would make one brief comment on the observation. To the best of my knowledge and belief there is no precedent for signature of any treaty by a movement which merely purports to represent a group of people and it would greatly complicate the problem of assessing the responsibility for the observance of treaty obligations if liberation movements or other miscellaneous organizations lacking the ability to discharge the obligations of States were allowed to sign, and ratify.

Chairman ZABLOCKI. Mr. Bonker.

Mr. BONKER. Thank you, Mr. Chairman.

Mr. Ambassador, I would like to take this occasion to thank you for helping to overcome obstacles posed by the enactment by the Congress of deep seabed mining legislation. I understand that at the outset of the latest meeting in Geneva you were met with some hostility by other nations over this legislative act. Your ability to allay the fears of the passage of that bill, that it was somehow a breach of good faith, or violation of international law, I think was truly a remarkable achievement. We in the Congress had considerable pressure to move that legislation forward. So your cooperation and your efforts in our behalf at Geneva are greatly appreciated.

I would also like to comment that I did fully intend to be at the Geneva Conference since I was scheduled to be there and at the International Whaling Commission meeting in London during that same period but because of legislative business I was unable to attend. Mr. Ambassador, I have three questions and I will just place them before you and give you an opportunity to comment on each.

The first relates to a statement that is found in the latest U.S. delegation report concerning the 36-member Council of the Seabed Authority and rightly pointing out that that was the most significant obstacle facing this session. Anytime that you attempt to deal

with the Council and voting procedures, and representation, -it poses enormous questions because ultimately it is the Council that will be making the decision. So I can appreciate what is at stake. You did state on page V of that report that approval of the plans of work should not be politicized in the Council. I fully concur. But I think the world of real politic tells us that there is no way you can avoid politicizing that Council. We have seen in our oversight responsibility of various international organizations that indeed these entities should not be politicized but have continuously been politicized recently. Also we have found that the IWC meetings in England that there is no way you can avoid politicization on some of the issues. I would like you to comment on whether you feel that that is going to be a principle upheld in practice or whether that is just a theoretical goal of the Council, or an attempt to head off any politicization of the Council?

Question 2 pertains to a comment you made in your testimony this morning, page 2, referring to another obstacle on a substantive issue that was not resolved. It concerns the precise wording of the rules regarding the delimitation of the economic zones on continental shelves between neighboring countries. It was my impression that under the 200-mile zones the treaties that have been established or negotiated as a result of extending our fishing jurisdictions, our economic zones, that any zone between two countries ought to be split down the middle.

Despite that, Canada and the United States have experienced considerable difficulty negotiating exactly where that boundary delimitation should go. I am wondering if this treaty, once it is consummated and in effect, would provide some direction over the establishment of those lines.

We found that gaining Senate approval of those treaties is extremely difficult because of the volatile nature of the fishing communities along the coasts of both countries.

Third, I would like to draw your attention to an article that appeared in the Washington Post recently about Micronesia's suit against Japan that is being filed at the International Court of Justice for Japan's planned dumping of low-level radioactive waste 190 miles off the coast of one of Micronesia's islands. What provisions does the draft Law of the Sea Convention make for such actions?

Ambassador RICHARDSON. Thank you, Mr. Bonker. I would be glad to respond as succinctly as I can to each of the questions that you have addressed to me.

With respect to the politicizing of the Council, one general comment I would offer is that I think it likely in the long term that once this seabed mining regime gets underway it will operate rather unobtrusively. It will be an ongoing administrative body with substantial incentives to make the seabed mining regime work on both halves of the parallel system. I would not suggest that this point is one that is likely to win over critics of the regime. Nevertheless, I think it is a realistic observation. Apart from that we are protected against politicization of the Council as such by the provisions requiring a consensus for the most sensitive decisions. The result is, therefore, that these decisions could not be made over

our objection and the objection of other Western industrial countries.

There remains a number of other issues where a three-quarters vote is involved. In that case we would need to get nine other countries to go along with us. But those all involve rather specifically defined powers and functions. We were able to get agreement that in the case of any general matter where the type of vote is not specified, the decision in the Council would have to be made by consensus.

The problem of politicization arises also, or might at least in principle become more troublesome in the Legal and Technical Commission which must decide what contracts or plans of work are subject to approval. We have set forth the criteria for the approval of a plan of work as narrowly and objectively as possible. And these have been spelled out in a way that leaves the Legal and Technical Commission no discretion. If the plan of work satisfies these enumerated criteria it must be approved. And we would have recourse to dispute settlement if it were rejected, notwithstanding this requirement. Beyond that we have sought to assure that the members of the Commission will act in a responsible manner. The text provides that they must be people of the highest competence and integrity with qualifications in relevant fields. And they are directed to base their recommendations solely on the provisions setting forth the criteria for the approval of contracts or plans of work and to report fully to the Council on the basis for any decision they make.

Finally, as I noted earlier, the question of exactly what vote they will take will be subject to later determination of the rules, regulations, and procedures.

With respect to the second question on the wording of the provisions on delimitation, it comes up in two articles, one dealing with the Continental Shelf and the other with the 200-mile Exclusive Economic Zone. The language in both, in the present text is identical, and the language in both is satisfactory to the United States.

Any change that may be made in this language in the next session is likely to tilt slightly more in our favor than the present text because the countries still objecting to the formulation are, for the most part, countries which share our preference for the application of "equitable principles," as distinguished from "equidistance" or the median line in the resolution of these issues.

You mentioned the manner in which lines beyond or within 200-mile zones would be drawn. We favor the application of equitable principles largely because of our dispute with Canada. The median line would give Canada a much larger portion of George's Bank than Canada would receive if equitable factors were taken into account, justifying swinging the line in an arc toward the northeast.

The language of these articles is very general, however. And while, if it were unsatisfactory, it could adversely affect the ultimate resolution of any arbitration of that issue, we think that it is really on the whole acceptable.

It says "the delimitation of the exclusive economic zone between states with opposite or adjacent coasts should be affected by agreement in conformity with international law." Reference to interna-

tional law is from our point of view helpful. "Such an agreement shall be in accordance with equitable principles." The fact that the requirement of agreement in accordance with equitable principles is put at the beginning of this sentence is helpful. It makes clear that the median or equidistance line is a means of finding a result in accordance with equitable principles because the language goes on "employing the median or equidistance line where appropriate, and taking account of all circumstances prevailing in the area concerned." Such circumstances could include historic fishing patterns. But this language cannot be self-executing and will require, in the many instances where there are boundary disputes around the world, some form of negotiation or adjudication.

Surprisingly, in a way, given the generality of the language and its brevity, it has required an enormous amount of negotiating effort. We had a negotiating group for 3 years presided over by the Chief Justice of Finland dealing with this issue.

Finally, with respect to the Micronesian suit against Japan and ocean dumping, the applicable article is article 210, dealing generally with dumping.

The key to this is that states would become obligated through the Law of the Sea Treaty to enact national laws no less effective than global rules and standards adopted by competent international organizations or diplomatic conferences. Thus, such rules would become applicable to all parties to the Law of the Sea Treaty whether or not they were parties to treaties negotiated through the organization established for the purpose of adopting these standards.

For example, the International Atomic Energy Agency in Vienna has been working on standards with respect to the dumping of radioactive wastes at sea and this article would make those standards generally applicable to parties to the Law of the Sea Treaty. This is spelled out in paragraph 6 of article 210 which states, "National laws, regulations and measures shall be no less effective in preventing, reducing and controlling pollution of the marine environment by dumping than global rules and standards."

So the treaty would have a very far reaching impact on this subject.

We understand that the Ocean Dumping Convention will shortly be brought before the Diet of Japan (if it has not already come up for consideration) and that upon ratification would bind Japan to the Ocean Dumping Convention Standards.

Chairman. ZABLOCKI. Mr. Bedell.

Mr. BEDELL. Thank you, Mr. Chairman.

Mr. Ambassador, the royalty payments in the treaty, would you tell us how they compare with the royalty treatments in the legislation? I do not want to know the details. My question is are they significantly larger or about the same or less?

Ambassador RICHARDSON. They are significantly larger. The royalty payments under the treaty would be 2 percent of gross proceeds in the recovery of an investment and after that the royalty would rise to 4 percent.

Mr. BEDELL. You indicated you think in the next session we probably will be able to reach final agreement on everything. In

the preparatory investment protection are you optimistic that you will be able to get investment protection in the final negotiating session?

Ambassador RICHARDSON. On balance, yes. I think it will be difficult. I think we have some further work to do internally within the administration on that subject. But one of the fortunate by-products of the enactment of seabed mining legislation has been the creation within the Department of Commerce, under NOAA of a deep seabed mining administration under the direction of Mr. Robert Knecht. Because of this the work on the preparatory investment protection issue is being very closely related to the steps needed to encourage deep seabed mining to go forward under legislation and he will be working on both of these issues in anticipation of the next session.

Mr. BEDELL. If we do sign the treaty and if 60 or more other nations do sign the treaty and then if we should refuse to ratify the treaty, how would that affect our situation as far as rights of travel through straits, this sort of thing? Is there any way to tell that? Does it leave us just where we are or does it leave us in a more precarious position, in your opinion?

Ambassador RICHARDSON. It is very hard to tell. We would, of course, insist that our rights of freedom of navigation and overflight remain unimpaired as high seas rights in accordance with preexisting international law. We might, in due course, accept some modification of the existing principles of international law in light of the modifications under the treaty, provided that the rights of maritime states as well as those of coastal states were recognized. It is clear, in any case, that signing the treaty and not ratifying it would not reduce our rights below whatever they would have been if we had not signed.

Mr. BEDELL. I understand that clearly but I guess what I am coming to is if we were to fail to ratify the treaty, in what way it would adversely affect our interests. Or do you feel that it would not particularly adversely affect our interests? Is the treaty worded in such a manner that for those nations which fail to ratify that they will be adversely affected as compared to those who do ratify in terms of the total international picture?

Ambassador RICHARDSON. Mr. Bedell, to give you a more complete answer I would have to make clear, at the outset, that a distinction needs to be drawn between the cost to the United States, resulting from the failure to achieve a benefit, and the cost to the United States that might result because somebody, some country or group of countries, wished to retaliate in some manner against us.

Again, a distinction needs to be made between the situation in which, although we do not ratify the treaty it, nevertheless, comes into force, and a situation in which, partly because we have not ratified, the treaty does not come into force.

The United States would gain a significant array of benefits from the entry into force of the treaty and these benefits would be significantly greater if we are also a party than if we are not. This is true certainly with respect to freedom of navigation and overflight, as well as with regard to the protection of marine mammals and the protection of the marine environment. I think, personally, it is marginally true also of the regime on the conduct of marine

scientific research and certainly of the provisions for dispute settlement. All of these things beneficially affect the interests of the United States, because they would establish a universally accepted regime substantially more satisfactory to those interests than would exist without the treaty.

Now, if the treaty comes into force, even though we do not ratify, those benefits would, to a significant extent, be achieved, although not as fully. I think, on the other hand, that if we do not ratify, it is unlikely that the other major Western industrial countries would do so and the consequence could then be seriously to undercut the standing of the treaty. I do not believe, therefore, that the chances of its entry into force in those circumstances are very good.

Finally, then you come to the question of the possibility of retaliation. Might countries that have been willing as part of a package deal to accept provisions with respect to the global mobility of air and naval forces retract their acquiescence in these provisions because the major maritime countries, the Western ones at least, did not go through with their half of the deal? That is possible. But it is conjectural.

Finally there is the question of the status of deep seabed mining absent a treaty, and this is highly uncertain. It is, at any rate, clear, that we cannot by national legislation confer a right to mine a given area of the deep seabed that is entitled to recognition by other countries except to the extent those other countries have entered into reciprocal arrangements with us. That would mean then that a seabed mining company would be embarking on seabed mining under reciprocal legislation knowing that its right to do so was subject to challenge by say 130 other countries; and that would at least be a far less satisfactory situation from the standpoint of seabed mining than would be its operation under a universally accepted regime.

Mr. BEDELL. Thank you, Mr. Chairman.

Chairman ZABLOCKI. Mr. Lagomarsino.

Mr. LAGOMARSINO. Thank you, Mr. Chairman. Mr. Ambassador, what provision is anticipated for U.S. membership in the Council of the Seabed Authority? Do we have that worked out yet in specific detail?

Ambassador RICHARDSON. Yes; we have what we think is a provision that effectively assures representation of the United States on the Council. This is a provision under which the representatives of each of the interest groups entitled to representation on the Council would be designated by the countries entitled to such representation.

We, for example, will certainly be among the eight states parties which have the largest investments in preparation for, and in the conduct of, activities subject to the jurisdiction of the International Seabed Authority.

The four who are selected for membership on the Council will be selected by those eight eligible countries from among themselves.

Another group entitled to representation are those states parties which during the last 5 years for which statistics are available have either consumed more than 2 percent of total world consumption or are net importers of more than 2 percent of total world

imports of the commodities produced from the seabed. Four of those countries have to be elected to the Council. Again they will be chosen by the eligible countries themselves.

We believe that since the United States would be eligible for both of these two groups, it is certain, for all practical purposes, that we would be able to assure our selection for one or the other.

Mr. LAGOMARSINO. To what do you attribute the cause for both sides lowering the rhetoric on the issues during the last negotiation? Maybe I should reword that. I am not sure that the rhetoric was high on our side at any point, but on the other side it certainly was. Why was it lower in your estimation?

Ambassador RICHARDSON. I think it was the consequence of the somber realization, Mr. Lagomarsino, that the Conference was dealing essentially with the question of whether or not there would ultimately be a treaty. To have allowed the unreasonable positions sometimes reflected in Third World rhetoric to be carried over into negotiating positions in such a manner as to prevent compromise would have meant failure. I think this was understood.

Mr. LAGOMARSINO. Did the signing by the President of the deep sea mining bill have any effect on that?

Ambassador RICHARDSON. It is difficult to say. I think the answer is probably not, so far as the negotiating process is concerned. I think it probably was a wash. It may have had some stimulatory effect, but it also created resentments.

So we had the feeling that on the one side pressure had been created, but on the other, that people did not wish to feel they were negotiating under the gun.

So while we did come out with a satisfactory resolution of substantive issues I think it was about equal because of and in spite of the legislation.

Mr. LAGOMARSINO. You did not notice any particular escalation or diminution of the rhetoric at that time, I take it?

Ambassador RICHARDSON. Well, the statements made were, on the whole, rather tougher in denunciation of the legislation, particularly in charging the United States with bad faith. And my reply was largely focused on a rejection of the charge of bad faith. It seemed to me that that was the one thing we could not allow to stand. I think on the whole, my reply had some impact. As I said earlier the one aspect of the negotiations in which we certainly suffered some prejudice, as a consequence of the legislation, was that of preparatory investment protection. And there, because of the very reason that this does properly belong within the jurisdiction of the people administering the legislation, there is perceived to be an overlap of interests between, on the one side, being ready to operate under the treaty but also, as I said, these same steps would accelerate potential for operation under the legislation, as well.

Mr. LAGOMARSINO. What is the long-range outlook from your position for deep sea mining as a potential for return on investment and, of course, for a source of revenue for the International Seabed Authority? Are the figures still as encouraging as they seemed to be sometime ago?

Ambassador RICHARDSON. The outlook, I think, is for a somewhat slower development of deep seabed mining than had seemed likely even a few years ago, perhaps even at the beginning of this year.

This is a consequence, largely, I believe, of an assessment of probable demand in prices as well as the availability of these same minerals from land-based sources, more than it is a consequence of the likely legal regime. These are matters on which the assessment seems to fluctuate with the current metals market outlook and I think it is really very difficult to make a worthwhile judgment. It is certainly difficult at this stage to make an overall assessment, even comparing the likely regime under the treaty with the regime that would exist in its absence. I gave a talk last week to a meeting of the American Mining Congress in San Francisco at which I attempted to outline as clearly as possible what the seabed mining regime will look like.

I frankly do not think that the industry, or some elements of it, has taken a fully objective look at the treaty regime. Nor do I believe they have taken a fully objective look at the drawbacks that would be associated with an attempt to operate outside the treaty.

Mr. LAGOMARSINO. Thank you very much.

Chairman ZABLOCKI. Mr. Fountain.

Mr. FOUNTAIN. Thank you, Mr. Chairman.

Mr. Ambassador, it is a privilege to have you back before this committee in the capacity in which you are now serving. I do not have any questions but I would like to compliment you and your staff for the great job you are doing. I recall that Mr. Broomfield—we describe each other as ambassadors—Ambassador Broomfield and I were at the United Nations in 1967, many of us were somewhat shocked when the little country of Malta made the suggestion, I think it was in the Political Action Committee or the Political Committee, the committee on which we served, in connection with the formation of a plan for the development of the seabed and the movement was about to get so strong that it appeared that the matter would be taken directly to the floor of the United Nations, or the General Assembly, and an effort made there to enact something on this subject. Realizing the complicated nature of the law of the sea and all of the potentials for decisionmaking and confrontation and controversy, many of us went to work then to get this matter referred to a committee as is quite frequently the case, even then not realizing that that committee and those who followed would continue. But to the extent to which we were frightened at that time, I have been pleased to note the slow but very deliberate manner in which we have operated and the position which we have taken. I am particularly impressed with the idea of trying to get a consensus on so many of the major matters. I simply want to express the hope that we will not find ourselves in the same situation with respect to voting as we are in the United Nations, particularly in a matter which involves such tremendous wealth, untold wealth in the sea and where we will be required to carry more than our burden and where almost any country will have the same voting power as it now has in the United Nations. But again I want to commend and express my own personal satisfaction that one with your background of training and experience in Government and your knowledge of both

domestic and international operations is serving in this capacity and I want to wish you well.

Ambassador RICHARDSON. Thank you very much Mr. Fountain. I am interested that you were present at the kickoff of this in 1967. It is fair to say much of what we have been struggling with ever since is to give specificity and content to the abstract concept of the common heritage of mankind.

Mr. FOUNTAIN. Thank you, Mr. Chairman.

Chairman ZABLOCKI. Mr. Solarz.

Mr. SOLARZ. No questions, Mr. Chairman.

Chairman ZABLOCKI. Mr. Gilman.

Mr. GILMAN. Thank you, Mr. Chairman. Mr. Chairman, I want to join my colleagues in commending Ambassador Richardson and his fine staff, Mr. Aldrich, Mr. Blumberg—I see that Mr. James and Mr. Taft are also here today with him. I wish to commend them all for the good work they have done in bringing us to this point and hopefully in seeing this through to fruition in the next few months. I do have a question. First of all is there a time limitation on obtaining the signatories? Has that been worked out?

Ambassador RICHARDSON. Yes, it is covered in the final clauses.

After the convention has been opened for signature, it will remain open until the last day of the 24th month following.

Mr. GILMAN. What happens if you do not have a consensus by that date?

Ambassador RICHARDSON. Well, that is a question that is likely to turn on the number of signatures necessary for the creation of the Preparatory Commission. We may agree in the charter of the Preparatory Commission we negotiate at the next session that the Preparatory Commission can go into business as soon as, let us say, 50 States have signed and then as each new State signs after that, it can join the Commission. But that is all that would turn on signature as distinguished from ratification.

Mr. GILMAN. So then essentially once you have 50 signatories, then the treaty is effective—is that what you are saying to us?

Ambassador RICHARDSON. No. The number of signatures would not bring the treaty into effect. That would require 60 ratifications, or 60 countries which either ratified the treaty or adhered to it.

Mr. GILMAN. Then what happens if we do not have 60 signatories within the 24-month period?

Ambassador RICHARDSON. If we had a requirement for a certain number of signatures in order to create the Preparatory Commission, it could delay its creation, that is all. A country that does not sign can still adhere later on through whatever its constitutional process is for ratification. The only difference between ratification and adherence is that a country that has signed ratifies the treaty, while a country that has not signed adheres.

Mr. GILMAN. So essentially there is no minimum requirement except for the Preparatory Commission, is that right?

Ambassador RICHARDSON. Yes.

Mr. GILMAN. And, a country can come in at any later date and ratify and become a party to the agreement, am I correct in that interpretation?

Ambassador RICHARDSON. Yes.

Mr. GILMAN. I, too, want to commend you on your statement with regard to the liberation movements and the observer groups in reference to the prior inquiry made by the gentleman from Illinois, Mr. Findley. I would hope that you might want to examine the recent vote that we took in the Congress with regard to PLO involvement at the International Monetary Fund procedures and meetings. The Congress resoundingly indicated that the PLO should not have any part in such a formal institution since it did not represent any formal body. And I hope that you maintain that strong stand and certainly want to commend you for it.

Chairman ZABLOCKI. Mr. Guyer.

Mr. GUYER. Thank you, Mr. Chairman. The hour is late and we have a vote. I too want to join my colleagues in commending the Ambassador for the dedication and profundity to which he has gone in searching and researching a very, very complicated subject. I am not going to pose a question except more of a statement. I hope there will be some satisfactory way to monitor the competitive spirit of various countries as they try to export ocean minerals and so forth. I hope there will not be what we used to call a range war type of thing in operation or a situation in this regard so that the exporting mineral countries will not take advantage of those not so favorably situated. I will not make that as a question in the interest of time. I want to commend you highly. I know how dedicated you have been in this work.

Ambassador RICHARDSON. Thank you very much.

Chairman ZABLOCKI. Mrs. Fenwick.

Mrs. FENWICK. Thank you, Mr. Chairman. I have many questions, but since we are faced with a number of votes coming up, I will be brief. I think what you have achieved is remarkable. The only question I have in my mind is are we safeguarded through the International Authority, and the Council? Will we have a repetition of what we have seen in the United Nations in the way of difficulties in pursuing justice and equity? And is there any way of making sure that this does not happen again when we have large groups of nations? Does the system of the International Commission and the Council insulate us from the danger to some extent anyway? Can we count on the International Seabed Council and the Authority? Will that work?

Ambassador RICHARDSON. I think so, Mrs. Fenwick. The interests most directly affected are required to be represented on the Council. The manner in which issues have been subdivided for purposes of determining the necessary majorities should assure that no important interests can be overridden by an unsympathetic majority and the availability of various kinds of dispute settlement, including commercial arbitration for contractual disputes, recourse to a Seabeds Disputes Chamber under the Law of the Sea Tribunal, should, in combination, assure that the system will work fairly and equitably.

Mrs. FENWICK. But suppose a sovereign country says "Well, I do not choose the tribunal or the International Court or arbitration. I simply will not." Are there penalties? What penalties?

Ambassador RICHARDSON. If we are speaking here of the Seabed Mining Regime, the most extreme penalty would be the forfeiture of a contract under the Authority.

Mrs. FENWICK. I see.

Ambassador RICHARDSON. In a lesser case there is provision for the imposition of monetary penalties.

Mrs. FENWICK. Thank you. Thank you, Mr. Chairman.

Chairman ZABLOCKI. Thank you Ambassador Richardson. We appreciate your coming and giving us so much of your time. Your responses to the questions were direct, complete, and very thorough. We congratulate and commend you and your associates for the skillful way you have negotiated our U.S. policy position at the Law of the Sea Conference. We wish you well in the future. We look forward to your next appearance before this committee. The committee stands adjourned subject to the call of the Chair.

Ambassador RICHARDSON. Thank you, Mr. Chairman.

[Whereupon, the committee adjourned at 12:18 p.m., subject to the call of the Chair.]

The Committee on the Law of the Sea has completed its extensive negotiations and will be virtually all in the negotiating phase. There have been many conversations with a view to the finalization of the Convention that would allow the United States to participate in the Convention. It is likely that the Convention will be completed by the end of the year and will be completed and opened for signature by 1981.

The Committee has prepared a schedule for the year 1981, which will be the working Committee to meet informally during the summer months, and will meet January 12, in New York, in order to complete the review of all articles, in all languages, before the start of the final session. After a two-week interval, the final session will then meet in New York, if arrangements are available. Sessions would be held for two weeks, with a possible one-week extension, to complete the final work of the Committee. A final session will then be held in London, presumably later in the year. The final session will be the opening of the Convention for signature.

In a report at the end of the final session, the Secretary will submit to the House a report on the work of the Committee.

The Committee has also prepared a preliminary schedule for the review of the Convention, and a preliminary schedule for the review of the Convention, and a preliminary schedule for the review of the Convention.

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APPENDIX 1

U.S. DELEGATION REPORT: RESUMED NINTH SESSION OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA, JULY 28-AUGUST 29, 1980—GENEVA

SUMMARY

The Resumed Ninth Session of the Third United Nations Conference on the Law of the Sea has completed substantive negotiation of texts on virtually all major outstanding issues. These texts have been incorporated into a new informal Draft Convention that seems likely to command general acceptance in principle. It is likely that the Convention on the Law of the Sea will be completed and opened for signature in 1981.

The Conference has proposed a schedule for 1981 that provides for the Drafting Committee to meet intersessionally for seven weeks, commencing January 12, in New York, in order to complete its review of all articles in all languages before the start of the Tenth Session. After a one-week interval, the Tenth Session would then meet in New York, if facilities are available, commencing March 9, for six weeks, with a possible one week extension, to complete the final text of the Convention. A final session would then be held in Caracas, presumably later in the year, for formal statements and the opening of the Convention for signature.

As a result of the work of the Ninth Session, the major questions outstanding are the three deferred at this session of the Conference:

1. **Preparatory Commission:** The Conference needs to complete the resolution establishing a Preparatory Commission for the establishment of the International Seabed Authority and the drafting of rules, regulations and procedures.

2. **Preparatory Investment Protection:** Prospects for support of the Convention could be significantly improved if means were found to ensure that those who make investments in seabed mining prior to the entry into force of the Convention will, if qualified, be accorded priority in seeking a contract from the Authority.

3. **Participation:** Various proposals have been made to allow entities other than states to become parties to the Convention. The questions involved range from the justifiable juridical requests of the European Community, the associated states that are emerging in the Trust Territories of the Pacific Islands and a small number of other associated states, to the explosive and potentially destructive issue of liberation organizations.

In addition, the question of the precise wording of the articles regarding delimitation of economic zones and continental shelves between neighboring states has yet to be settled, although it seems clear now that any settlement will not entail drastic substantive modifications to the current text.

There are a number of problems in all Committees at the margins of the basic settlement where some modifications that could command a consensus would significantly help one or a few countries to become party to the Convention. The next session of the Conference will have to find a means of making such modifications without running the risks of disturbing the balance of the Convention by reopening matters that are settled.

It is also possible that on the basis of closer examination of some of the present accommodations on such issues as voting in the Council and financing the Enterprise, governments may want to seek improvements in certain respects.

Finally, the Drafting Committee of the Conference must complete its work before the next session if the Conference is to be in a position to debate and adopt a Convention.

It is not unrealistic to expect that all of this can be achieved by the end of the Tenth Session. There is, however, a significant danger as the Conference approaches its final stages, i.e., the misguided belief that substantive changes affecting the balance of the Convention can be effected through voting or the threat of voting. The United States and other delegations have made it clear that this would destroy the Convention.

Seabeds

The negotiation of new texts dealing with the major outstanding deep seabeds issues constitutes the decisive breakthrough of this session of the Conference. These new texts provide for the decision-making procedures of the Council of the Seabed Authority and related matters, and also contain improvements and clarifications of other texts dealing with the system of exploration and exploitation as well as with financial matters.

The single most significant obstacle facing this session of the Conference was the impasse over voting in the 36-member Council of the Seabed Authority. The fundamental question in our view was how to ensure that important decisions could not be taken contrary to the interests of states most affected, particularly the western seabed mining and consumer nations. The developing countries were strongly insistent upon equal weight being given to each member's vote, and the negotiations were further complicated by the refusal of the Soviet Union to accept any result which it considered discriminatory.

The deadlock was broken by a proposal to make decisions on the most sensitive issues subject to consensus. Given the risks of paralysis in a system under which each Council member would have an equal, potentially blocking vote, it was essential that the number of issues requiring a consensus be limited. Other important issues could then be made subject to a three-fourths vote; the remainder, a lower majority.

Under the final compromise, substantive issues requiring decision by the Council are divided into three categories. Depending on their sensitivity, decisions require either a two-thirds or three-fourths vote, that includes a majority of the total membership of the Council, or consensus (defined to mean the absence of any formal objection).

The decisions subject to the consensus procedure are those concerning production policies and limitations, the adoption of rules, regulations and procedures of the Authority, and the adoption of amendments to Part XI of the Convention, including Annexes III and IV. This result is combined with a technical streamlining of the provisions of the Convention dealing with rules, regulations and procedures which makes clear that the procedure requiring consensus in the Council applies to the three decisions noted above. The emergence of this compromise in turn made it possible to resolve certain other substantive issues by providing that their solution would be set forth in the rules, regulations and procedures of the Authority.

A critical element in this overall First Committee settlement is found in the paragraph of the final clauses which states that the draft rules, regulations and procedures adopted by the Preparatory Commission shall apply provisionally from the date of entry into force of the Convention pending adoption by the Authority of rules, regulations and procedures. Many governments may not, therefore, deposit instruments of ratification or accession to the Convention until the draft rules, regulations and procedures are completed by the Preparatory Commission.

The question of Council voting posed a different type of problem with respect to approval of mining contracts. It is basic to the system set up in the treaty that a qualified applicant who satisfies the requirements of the Convention, and whose project would not exceed the specified production limitations or anti-monopoly requirements, should receive a contract. Accordingly, approval of plans of work should not be politicized in the Council. The text specifies that the Legal and Technical Commission must evaluate plans of work strictly on the basis of the criteria set forth in the treaty. If the Commission recommends approval, the proposed plan of work will be deemed approved unless the Council disapproves it by consensus (excluding the state or states making the application or sponsoring the applicant). On the other hand, disapproval of the proposed plan of work by the Commission could be reversed by a three-fourths vote of the Council. The rules, regulations and procedures of the Authority will establish the decision-making procedures of the Commission.

There were a significant number of other changes in the seabeds text. The distribution of benefits from the seabeds, while effected by the Assembly, is subject to rules, regulations and procedures which must be adopted by both the Council and the Assembly. The so-called split contracting system has been fully implemented throughout the text, thus ensuring that early investors will not be frustrated by the production limitation or face premature procedures for selection among competing applicants. There is no longer automatic liability for any shortfall in financing the Enterprise resulting from the delay or failure of some states to ratify the Convention. There have also been some improvements in other provisions regarding the financing of the Enterprise, including the call-up of funds as needed, default procedures and improved repayment procedures. The power of commodity conferences to decide the question of what production from the Area the Authority will represent has been protected. The tax immunity provisions have been replaced by much better ones virtually identical to those included in the recent Common Fund Agreement. Seabed amendments do not enter into force until one year following the deposit of the necessary instruments of ratification, the same one-year period required for notice of denunciation.

Second and Third Committees

The Second and Third Committees, the texts of which deal with the substance of the Law of the Sea Convention aside from deep seabed matters, met only to consider drafting questions. There were no significant attempts to alter the substance. Nevertheless, some delegations are continuing to threaten votes

on such matters as authorization for innocent passage of warships in the territorial sea or changes in the economic zone regime. The United States and other delegations have made it clear that there is no possibility of a Convention on the Law of the Sea with such provisions added, and that pressing these points will result either in the destruction of the Convention or in a "negative record" that makes it obvious that the proper interpretation of the Convention is the opposite of what the proponents seek.

The atmosphere created by these extreme proposals made it difficult to consider largely technical questions that do not alter the balance of the text and that could command a consensus. This can probably be done at the next session.

Dispute Settlement

With a final reorganization of some of the provisions, the negotiations on settlement of disputes are completed. It is possible that minor changes may emerge as a result of the completion of negotiation on delimitation of the economic zone and the continental shelf between opposite and adjacent states, and with respect to certain technicalities regarding the seabed dispute settlement system.

Final Clauses and General Provisions

The Informal Plenary has essentially completed the task of arriving at a set of final clauses that can command general agreement. The texts that emerged provide for entry into force of the Convention after the deposit of 60 instruments of ratification or accession. They protect the integrity of the overall "package deal," involving different priorities of different states, by making clear that reservations and exceptions are only permitted when expressly provided in a particular article of the Convention. At the same time, the new texts facilitate ratification by giving broad latitude to states to make declarations that do not purport to modify the Convention, and by removing restrictions on the right to denounce the Convention.

An element of flexibility is introduced by allowing amendments. The procedures both for adoption and for entry into force of amendments are quite stringent, and are designed to protect the underlying premise that all relevant interests must be balanced and accommodated. Given the complexity of the Convention, a helpful provision has been inserted allowing rapid adoption of amendments if no party to the Convention objects

within 12 months, after which they would be circulated for ratification or accession. The stability of the seabed system has in particular been preserved by making clear that amendments pending the Review Conference can only be adopted if approved in identical form by the Council and the Assembly of the Authority. Under the new First Committee text, a consensus would be required in the Council for approval.

There are several new general provisions. They prohibit abuse of rights or the use or threat of force in violation of the United Nations Charter, protect classified information, and provide for the protection of archeological objects and objects of historical origin.

Drafting Committee

This session demonstrated once again that it is difficult for delegations to give undivided attention to Drafting Committee matters during a regular session of the Conference. The Drafting Committee, having completed much of its initial harmonization efforts at its intersessional meeting in June, will proceed during the next intersessional period to the completion of the formidable task of textual review and concordance of the six language versions of some 400 articles.

COMMITTEE I

Overview

The Working Group of 21 (WG-21) began its work with a broad review of the status of the hardcore issues still unresolved at the end of the first part of the Ninth Session. It then proceeded to intensive consultations in smaller groups. The WG-21 was chaired by First Committee Chairman Paul Engo (Cameroon). In the absence of Frank Njenga (Kenya), Professor Harry Wuensche (German Democratic Republic), First Committee Vice-Chairman and Chairman of the Group of Legal Experts on Dispute Settlement, coordinated the consultations on matters relating to the system of exploration and exploitation. Ambassador Tommy Koh (Singapore) coordinated consultations on financial arrangements and the Statute of the Enterprise. Chairman Engo, with the assistance of Ambassador Koh, coordinated consultations on decision-making in the International Seabed Authority, including procedures for the approval of plans of work. Ambassador Satya Nandan (Fiji) coordinated consultations relating to the production policies and quota anti-monopoly provisions. Due to Professor Wuensche's responsibilities for other matters referred to above, there was no time for any meeting of the Group of Legal Experts on Dispute Settlement.

The Chairman of the First Committee, as principal coordinator, received reports from the other coordinators including revisions in the text of the ICNT Rev.2 (A/Conf. 62/C.1/L.28 and A/Conf. 62/C.1/L.28/Add.1). These reports and texts were considered in a meeting of the First Committee and have been included in the Draft Convention (Informal Text). Although some delegations expressed difficulties and reservations regarding certain provisions, no delegation objected to the inclusion in the Draft Convention of the new texts as a package satisfying the criteria of A/Conf. 62/62 and bringing the Conference close to the achievement of consensus and a final text on First Committee matters.

System of Exploration and Exploitation

WG-21 discussions were held on a number of outstanding issues in Part XI and Annex III on the system of exploration and exploitation. Consultations followed in a smaller group coordinated by Professor Wuensche. These consultations had wide participation from among both developed and developing countries and the Eastern European Socialist countries, including the United States, the United Kingdom, the Federal Republic of Germany, France, Japan, Peru, Brazil, Trinidad & Tobago, Jamaica, India, Sri Lanka, Egypt, Tunisia, Tanzania, Madagascar, Sierra Leone, Senegal, the Soviet Union and the German Democratic Republic. Due to the extensive consultations being conducted by Chairman Engo and Ambassador Koh on Council decision-making, it was impossible to schedule enough meetings of the Wuensche group to complete work on the system of exploration and exploitation in that forum. Consequently, some of these matters were taken up in the consultations conducted by Ambassador Koh with the participation of Professor Wuensche after the discussions on decision-making had been completed. The two groups had similar membership.

Revised texts were issued on most of the major outstanding issues (A/Conf.62/C.1/L.28/Add.1). Some of the texts offer solutions to problems that have long plagued the Conference, such as Article 140 on the sharing of financial and other economic benefits and a uniform system for adoption of the rules, regulations and procedures of the Authority (Article 160(2)(f), 162(2)(n), 167, 168, and Annex III, Article 17).

A number of other improvements and clarifications of both a substantive and purely drafting nature, were made. These include: conforming the period for entry into force of all Review Conference amendments to the one-year period specified in the final clauses for entry into force of other amendments and for notice of denunciation (Article 155); making clear that the requirements for sponsorship of applicants is to be further defined in the rules, regulations and procedures of the Authority (Annex III, Article 4); and a number of wording improvements concerning the transfer of technology (Annex III, Article 5). Some improvements were also made in the small group coordinated by Ambassador Nandan concerning production policies (Articles 150, 151), and drafting changes were made in Part XI and Annex III (Articles 6 & 7) to implement the split contracting system

proposed in Ambassador Nandan's report from the first part of the Ninth Session (A/Conf.62/C.1/L.27 (Part II)). In addition, a revised text was issued on quota/anti-monopoly (Annex III, Articles 6 and 7), a subject which the United States Delegation now regards as closed.

Revised Texts

A summary of the most significant provisions of the new texts relating to the system of exploration and exploitation follows:

Article 140 - Sharing of Benefits

The revised text of Article 140, combined with the revised texts of Articles 160(2)(f), 160(2)(j), 162(2)(n), and 161(7)(d), reflects a resolution of the thorny political problem of the sharing of financial and other economic benefits derived from activities in the Area. This resolution involves three elements.

First, the general principle contained in Article 140, that peoples who have not attained full independence or other self-governing status are eligible for financial and other economic benefits derived from activities in the Area, was retained.

Second, a new procedure was adopted for the establishment of the rules, regulations and procedures of the Authority concerning distribution of such benefits which involves Council formulation, Assembly consideration and approval, and Council reconsideration if the Assembly decides not to approve. Unlike the other rules, regulations and procedures of the Authority (the new Articles 160(2)(f) and 162(2)(n)), these rules and regulations would not be effective until approved by the Assembly; however, like the other rules, regulations and procedures of the Authority, the Council's original formulation could not be changed by the Assembly itself, but could only be returned to the Council for reconsideration. Under the new Article 161(7)(d), decisions of the Council on all rules, regulations and procedures of the Authority would be taken by consensus. A new paragraph, 160(2)(j), was also added giving the Assembly the function of deciding upon the equitable sharing

of financial and other economic benefits derived from activities in the Area, consistent with the Convention and the rules, regulations and procedures of the Authority.

Third, a reference to payments and contributions made pursuant to Article 82 on revenue sharing from the continental shelf beyond 200 miles was included in the provisions establishing the new procedure for adoption of rules, regulations and procedures for the sharing of financial and other economic benefits (Articles 160(2)(f) and 162(2)(n)). Although the Report of the Chairman (A/Conf. 62/C.1/L.28 p. 28) may be read as implying a different result, this reference does not change the text of Article 82, which provides that payments shall be made "through the Authority" but limits the eligible recipients to States Parties.

The above solution represents a compromise between the developed countries, which wished to limit to States Parties the distribution of financial and other economic benefits derived from the seabed under Article 140, and the developing countries which opposed any change in the ICNT Rev.2 on this matter.

It should also be noted that helpful drafting changes were made in Article 140 to make clear that the principle is implemented only as specifically provided and that the benefits referred to in the Article include both financial and other economic benefits derived from activities in the Area.

Article 147 - Accommodation of Activities in the Area and in the Marine Environment

The words "in the Area" were deleted from subparagraph (b) concerning stationary and mobile installations used for the conduct of activities in the Area in order to make clear that the Article applies to all such installations, whether or not located in the Area as defined in Article 1, i.e., the seabed or ocean floor and subsoil thereof beyond the limits of national jurisdiction.

Articles 150 and 151 - Policies Relating to
Activities in the Area and Production Policies

Discussions on Article 150 and Article 151 were held in the Production Limitation Group, again chaired by Satya Nandan of Fiji. There was relatively little debate on the production limitation formula itself. Most attention was instead focused on the chapeau, subparagraphs (d) and (e) of Article 150 and new subparagraphs of that article dealing with market access and development policy.

In negotiations on Article 150, the United States emphasized that one stated goal of the Seabed Authority should be to develop the resources of the Area. The EC insisted on clarifications in Article 150, subparagraphs (d) and (e), and was supported by the United States. They contended that some might mistakenly read subparagraph (d) to mean that seabed mining was meant to be a residual supplier. Land-based producers sought a clause requiring states to keep mineral and metals markets in consumer countries open to land-based suppliers on a non-discriminatory basis vis-a-vis suppliers from the seabed. Land-based producers also asked for a clause which would have prevented subsidization of seabed mining.

The outcome was an addition of two subparagraphs to Article 150. The first, (h), makes explicit the developmental aspect of the Authority's role. The second, (i), restrains states from establishing conditions of market access for seabed production better than the best available to land-based sources.

Efforts by Canada and several African countries to lower the floor percentage (the minimum growth rate for the production control trend line) or to change the safeguard (protection for land-based producers against a possible loss of their preexisting market) did not succeed. Many delegations, including several important land-based producers, were quite ready to accept the production control formula as it appeared in Article 151 of the ICNT Rev.2. The United States Delegation made clear that any change in the formula would put the entire text of Article 151 in jeopardy. The new text of Article 151 includes some drafting changes useful to a clearer reading, but changes nothing of substance.

At the request of the USSR, changes were made in the text of Annex III, Articles 6 and 7, to allow quota/anti-monopoly provisions to extend past the end of the interim period by means of rules and regulations of the Authority adopted at that time. Other changes were made in Annex III to ensure that the entire text would be consistent with the split contracting system embodied in Article 151, paragraph 2 of the ICMT Rev.2.

At the very end of the session several African land-based producers sought changes in the text of Article 151, paragraph 4, and the new market access clauses of Article 150. The changes would require among other things creation of a compensation scheme for certain land-based producers to be funded by the developed countries. These proposed changes differ from the present text which envisages a compensation system funded from revenues of the Authority. We are opposed to this change and we do not believe that these proposals enjoy widespread support in the Conference. Drafting changes in Article 151, however, may be needed to remove ambiguities that the African land-based producers have identified.

Article 155 - The Review Conference

Article 155, paragraph 4 (formerly paragraph 5) was revised to change the period for entry into force of amendments adopted in the sixth year of the Review Conference after ratification by two-thirds of the States Parties from thirty days to twelve months. This change conforms this time period to the time period specified in the final clauses for entry into force of seabeds amendments and for notification of denunciation.

Two other changes were made in this Article. In the first sentence of paragraph 4, the words "changing or modifying" were included to make clear that the Review Conference might decide either to change the system of exploration and exploitation or to modify it. Additionally, the word "decisions" in paragraph 5 (formerly paragraph 4) was changed to "amendments" to avoid any implication that the Conference could take any decisions affecting the system other than by proposing amendments or treaty revisions. It was understood that the Conference might decide either to propose no changes, to amend the system in the Convention, or to adopt a new Convention on the matter.

Articles 160(2)(f), 162(2)(n), 167, 168, and
Annex III Article 17 - Rules, Regulations and
Procedures of the Authority

An important improvement in the revised text is provision for a single system for the adoption of rules, regulations and procedures of the Authority governing financial rules, including the rules on borrowing, the transfer of funds from the Authority to the Enterprise, and the transfer of funds from the Enterprise to the Authority, and administrative rules as well as those governing the system of exploration and exploitation. This uniform procedure is now contained in Articles 160(2)(f) and 162(2)(n) which provide that all rules, regulations and procedures will be adopted and provisionally applied by the Council pending consideration and approval by the Assembly. Article 160(2)(n) and Article 162(2)(p) were deleted as no longer necessary, and drafting changes were made in Article 160(2)(x), Article 167, and Article 168 to implement the new uniform procedure.

As an element of this package, Article 17 of Annex III was amended to make open-ended the formerly exhaustive list of aspects of the system of exploration and exploitation subject to rules, regulations and procedures of the Authority. This change had long been sought by the Group of 77, which argued persuasively that all matters on which rules, regulations and procedures might be needed could not reasonably be foreseen. In order to make possible this flexibility, limitations stated in general terms were incorporated in Articles 160 and 162.

Article 162(2)(a) and (k)

Changes in these subparagraphs ensure that the Council's supervision and control is limited to matters within the competence of the Authority and is exercised in accordance with the rules, regulations and procedures of the Authority.

Annex IIIArticle 4 - Qualifications of Applicants

Although we were unsuccessful in our efforts to delete the sentence in paragraph 2 requiring sponsorship by more than one state in cases where a corporation's nationality and effective control are different, the provision was improved by the addition of a sentence providing that "the criteria and procedures for implementation of the sponsorship requirements shall be set forth in the rules, regulations and procedures of the Authority."

Article 5 - Transfer of Technology

A number of useful improvements were made in this Article.

First, in paragraph 3(a), the phrase "which is used by him" was changed to "which he uses" to make clear that the obligation to transfer technology pertains only to that technology which the contractor actually uses and to avoid any implication that he might be required to transfer technology before he has used it himself.

Second, the last sentence in paragraph 3(b) was deleted in order to avoid the implication that the general assurance covered by that paragraph could ever be made legally binding.

Third, the first sentence of paragraph 3(c) was redrafted to alter the possible ambiguous obligation to take "all feasible measures" to acquire a legal right to transfer technology requested by the Enterprise into an obligation to acquire a binding legal right to transfer the requested technology "whenever it is possible to do so without substantial cost to the contractor." It was understood that the Enterprise would bear any substantial cost resulting from carrying out these obligations if the Enterprise requested the contractor to acquire such a legal right.

Fourth, although the United States and other developed countries continued to oppose the provision in paragraph 3(e) for transfer of technology under certain circumstances to developing countries, developing country insistence on its retention remained unshakeable. Nevertheless, it was possible to revise the text to state more clearly that this obligation extends only to the site banked by the contractor.

Fifth, paragraph 4 was revised to make clear that only the offers made by the contractor (and not those by the Enterprise) are subject to arbitration on the question of whether they are within the range of fair and reasonable commercial terms and conditions. In addition, the text clarifies that an adverse decision of the Arbitral Tribunal will not of itself result in the initiation of proceedings against the contractor. Such proceedings can only be invoked if the contractor refuses to revise his offer and thus violates his contract by being unwilling to sell on fair and reasonable commercial terms and conditions.

One change extends the contractor's obligation to transfer technology. The revised paragraph 7 provides that the undertakings required by paragraph 3 shall be included in each contract for the conduct of activities in the Area until 10 years after the Enterprise has begun commercial production. The text formerly provided that such undertakings would be included in contracts only until the Enterprise had begun commercial production. The limit on the enforceability of such undertakings remains the same, i.e., until 10 years after the Enterprise has begun commercial production. The United States and other industrialized countries attempted to reduce this period to 5 years; the developing countries wished to eliminate the time limit entirely. The resulting compromise was accepted in the light of developing country assurances that they would not press for other changes they had sought in Article 5 such as inclusion of processing technology in the transfer obligation. It was understood that the United States and other industrialized countries would continue to oppose paragraph 3(e).

Articles 6 and 7 - Quota/Anti-Monopoly

Early in the resumed Ninth Session, the French delegation reintroduced three changes in the anti-monopoly texts which they had pursued without success in the New York session of the Conference last spring.

The first of these involved the computation of the maximum density permitted to any one State Party within the basic control area of 400,000 square kilometers by including in the count plans of work undertaken in conjunction with the Enterprise in reserved sites within the Area (Annex II, Article 6, paragraph 3(d)).

The second would have inserted the concept of "effective control" in the method of computing pro-rata shares where a plan of work is undertaken by a consortium sponsored by more than one State Party (Article 6, paragraph 4).

The third, and most significant, proposed a fixed numerical quota where selection is required among competing applications because of the production limitation in Article 151. The French proposal would have provided that an application sponsored by a state that has not yet received a production allocation "shall have priority" over an application sponsored by a state already in possession of two or more such allocations (Article 7, paragraph 4).

During the discussions in WG-21, these proposals were supported by the Soviet Union and opposed by the United Kingdom, the Federal Republic of Germany and the United States, which took the position that the texts to which they had agreed in New York already represented a negotiated solution to the problem and did not merit any further change. Consultations coordinated by Dr. Wuensche failed to bring any of the interested parties closer to agreement.

The Soviet Union took the position that the introduction of the split contracting system in Article 151 provided sufficient reason for re-examination of the anti-monopoly texts. Subsequent discussions between the United States and Soviet delegations coordinated by Ambassador Nandan led to compromises on two new provisions for insertion in Articles 6 and 7 of Annex III.

The new paragraph 5 of Article 6 provides that following expiration of the interim period covered by the production limitation, the Authority may adopt through rules, regulations and procedures "other procedures and criteria" in addition to the maximum density provisions.

Paragraph 5 of Article 7 (formerly paragraph 4) has been re-worded to make clear that, where selection among applications is made necessary by the production limitation, it shall "avoid discrimination against any State or System" as well as prevent monopolization of such activities, as already provided in the text.

Both of these provisions were included in the report of the Coordinators of WG-21 to the First Committee (A/Conf. 62/C.1/L.28/Add.1) and were included in the Draft Convention. Although a new effort may be made to reopen the quota/anti-monopoly issue at the next session, the United States regards the present text as final.

Article 18 - Penalties

In paragraph 2, the word "or" was deleted to make clear that monetary penalties are an alternative to suspension or termination of contract in cases of serious persistent and willful violations of the fundamental terms of the contract.

Other Issues Deferred

A few other changes that were proposed to make drafting or modest substantive changes in the text were deferred for further consideration at the next session. These included revision of the title of Section 3 of Part XI to read "Conduct of Marine Scientific Research and Activities in the Area"; revision of Article 168 to authorize the imposition of monetary penalties on staff members who violate their obligations; and some drafting amendments in Articles 4 and 9 of Annex III.

Financial Arrangements

Overview

Ambassador Tommy Koh of Singapore, acting on behalf of Paul Engo, Chairman of the Working Group of 21, presided over negotiating sessions on financial issues related to the seabed mining regime. After consultations with individual countries and intensive negotiations both in WG-21 and in a small group where the interests of industrial countries were represented by the United States and the Soviet Union, Koh produced a new text on financing the Enterprise (Annex IV, Article 11) which extensively revised the provisions on (1) the determination of the amount of the total capital of the Enterprise, (2) the measures to be taken in case there is a shortfall in Enterprise financing because of insufficient adherence to the Convention, (3) the procedures for call-up of State Party financial obligations, and (4) the repayment of the interest-free loans.

In addition, Article 183 on the tax immunities of the Authority was replaced in its entirety with a new provision based on a similar provision in the Common Fund arrangement. The substance of the financial terms of contracts (Annex IV, Article 13) was not discussed, and the previous text remained largely intact.

Amount of Total Capital of the Enterprise

There was no change in the general understanding that the capital should be equal to the cost of a four-metal project. At issue, however, was the desire of the industrialized countries for a definite figure at the time of ratification, and the desire of the G-77 to make sure that the initial figure would not be eroded by changes in costs to an extent that would cripple the Enterprise.

In order to make the figure available at the time of ratification, it was agreed that the Preparatory Commission would include the amount in the draft rules, regulations and procedures of the Authority. (Under Article 304 of the Draft Convention, the draft rules, regulations and procedures prepared in the Preparatory Commission will be the provisional rules, regulations and procedures of the Authority when the treaty enters into force.) To partially meet G-77 concerns, it was agreed that the Preparatory Commission would also set forth in the rules, regulations and procedures the "criteria and factors" to be considered in adjusting the figure. It was also understood, however, not to address in the treaty the means (either institutional or otherwise) by which the amount may be adjusted.

Supplementary Financing

Near the end of the last session, Roh added a new provision which would obligate states to make supplementary financing available to the Enterprise in case it faces a shortfall because not all states have adhered to the Convention. The total supplementary financing was limited to no more than 25% of the total financing of the Enterprise.

The industrialized countries, including the Soviet Union, objected strenuously to any text which mandated additional contributions. They argued that such a provision severely strained budgetary processes since it amounted to an additional financial obligation of uncertain amount. In addition, application of the provision would run directly contrary to the long-standing reluctance of the United States Congress to authorize appropriations for more than 25% of the cost of any international organization.

There was extensive debate on the original United States proposal, supported by the western and eastern industrialized nations, that the request for any supplementary funds should be the subject of a non-binding Council recommendation. The G-77 rejected this proposal. After further debate, however, the G-77 stated that it could accept a provision requiring the Assembly to adopt by consensus measures for dealing with the shortfall. The United States Delegation, although preferring a Council role, was able to support this proposal. It protects the financial interests of all States Parties since measures adopted by the Assembly require consensus. Further, since the Convention establishes no obligations to contribute to the Enterprise beyond the initial contribution, any supplementary fund established by the Assembly would have to be voluntary.

Call-Up Procedures

Previous texts contained no specific provisions for calling up the funds which States Parties had agreed to provide for the financing of the Enterprise. In order to relate the call-up procedures to the Enterprise budget and make more certain that the Enterprise would call up funds only as needed for its operations, the United States proposed that such procedures be specified in the draft rules, regulations and procedures prepared by the Preparatory Commission. The G-77 rejected this approach as offering the possibility of a veto over Enterprise operations by industrial countries, and insisted that the States Parties make the entire amount of interest-free loans and debt guarantees available upon entry into force of the Convention.

Koh thereupon produced a new text which drew upon a proposal by the Netherlands delegation in obligating States Parties to deposit promissory notes with the Enterprise at the time of ratification in the amount of their total share of interest-free loans. The Governing Board of the Enterprise is required to prepare a schedule of its financial needs, on an annual or appropriate basis, and to draw against the notes on the basis of this schedule. States would be notified of their obligation under the schedule "through the Authority." Although the new provision does not explicitly state the ratio of interest-free loans and debt guarantees in the call-up, the requirement that the call-up be in accordance with subparagraph 3(b) permits the view that one-half of the Enterprise annual financial requirements will be met by interest-free loans and one-half by borrowings guaranteed by States Parties.

Repayment Procedures

The ICMT Rev.2 provided that the repayment schedule of interest-free loans which States Parties make available to the Enterprise be based on a schedule adopted by the Assembly upon the recommendation of the Council. This would of course take place after the treaty came into effect. The United States argued that the terms and conditions for financing the Enterprise, in particular the repayment schedule for interest-free loans, had to be known in advance, so that states could evaluate their financial obligations when considering ratification. The United States Delegation therefore proposed that the repayment schedule be specified in the rules, regulations and procedures of the Authority to be drafted by the Preparatory Commission. The G-77 felt, to the contrary, that the terms of repayment could not be determined by the Governing Board until a later date, when the financial situation of the Enterprise was clearer.

The new text retains the old formula that the repayment schedule be adopted by the Assembly on the recommendation of the Council, but adds the requirement that the Assembly and Council also act on the advice of the Governing Board. Under the decision-making procedures which also emerged at this session, recommendations as to the repayment schedule would be adopted by a three-quarters majority of the Council. The Governing Board must be guided by the relevant rules, regulations and procedures of the Authority, which in turn must take into account the importance of ensuring the financial independence and success of the Enterprise. It was understood that these rules, regulations and procedures will address such matters as the priority, maturity and rate of repayment.

A number of other issues related to financing the Enterprise were dealt with during the session:

-- The formulation of the basic scale of assessments was amended (and thus clarified) to state explicitly in Article 11 of Annex III that assessments would be based on the UN scale adjusted for states not members of the UN.

-- The provision requiring that funds made available to the Enterprise be in convertible currency was amended to conform with similar language in the Common Fund.

-- The text now requires that the procedures for calling up funds in case of an Enterprise default on the repayment of debts guaranteed by States Parties be specified in the rules, regulations and procedures of the Authority.

-- The United States Delegation proposed that the provision by which States Parties "make every reasonable effort to support application by the Enterprise for loans in capital markets and from international financial institutions" should be amended by adding the words "where appropriate." The G-77, and ultimately Koh, rejected this proposal, but it was clearly understood that no state would feel constrained by this provision to support loans in cases that were inappropriate, for example, because of the nature of the international financial institution in question.

Tax Immunities of the Authority (Article 183)

The industrialized countries found Article 183 concerning the immunity from taxation of the International Seabed Authority to be wholly unacceptable. To correct the situation, the Netherlands delegation suggested that all articles on the privileges and immunities of the Authority be deleted, and that a separate protocol be negotiated. Alternatively, the Netherlands proposed a complete revision of Article 183.

The United States Delegation and other western delegations agreed that the text would have to be revised to ensure that (1) the Authority should only be exempt from direct taxation within the scope of its official activities; (2) the Authority should not be exempt from taxes which are no more than charges for services rendered; and (3) states should only be obligated

to the extent practicable to reimburse the Authority for indirect taxes. Regarding the treatment of employees of the Authority, however, the United States and EC countries differed. The United States insisted that States Parties reserve the right to tax their own nationals and permanent residents. The EC wanted the staff of the Authority to be subject to a tax proposed by the Authority for its own benefit on salaries and emoluments paid by the Authority.

The United States and EC resolved their differences by agreeing to propose the language on tax immunities contained in the Common Fund Agreement, since all Conference participants had already agreed to such language. After minor modifications, the G-77 agreed to allow the Common Fund language to be included in the text. Essentially, this text incorporates the suggestions of the western industrialized states and resolves the United States/EC difference along the lines of the United States proposal.

Decision-Making in the Council

Decision-making in the Council, the most difficult of all the seabeds issues, was given the highest priority during this session. In view of the total lack of progress on the issue at the first part of the Ninth Session, the WG-21 reviewed all the suggested alternatives. After discussions in the WG-21, intensive consultations were undertaken with the various interest groups by Chairman Engo, and, under his direction, by Ambassador Koh. These consultations began with the Chairman consulting separately with different interest groups, followed by formation of a small group which was later joined by others. The United States participated actively throughout these consultations, which continued through the fourth week of the session, with an unparalleled concentration of effort by all who participated.

Discussion in the WG-21 quickly resulted in further deadlock. The Group of 77 remained adamantly opposed to any voting mechanism based on weighted voting or a veto for any interest or geographical group; the western industrialized countries remained firmly committed to the need for a mechanism which offered protection for potential seabed miners and consumers of the types of minerals derived from the seabed against decisions adverse to their major economic interests; and the Soviet Union emphasized that any formulation which accorded the desired protection for the western industrialized countries would have to also accord similar protection to the Eastern European Socialist countries. Previous proposals for chambered voting,

possibly in combination with a blocking vote for regional groups, or for a three-fourths majority vote to include 50% of production and 50% of consumption of the types of minerals derived from the seabed accounted for by members of the Authority, were shown to be unacceptable to the G-77. Similarly, it did not appear possible to agree on a formula by which a specific number of states (proposals ranged from four to nine) could block decisions adverse to their interests, or on any formulation based on according such a blocking vote to a combination of interest groups.

Two themes, however, emerged from the WG-21 discussions which offered some direction to the consultations that followed. One was a revival of a reference to the principle of consensus and the desirability of a voting mechanism which would encourage decisions to be taken on that basis. Sentiment was also strong in the G-77 for a voting mechanism keyed to the importance of specific issues to be decided by the Council and for limiting to only the most sensitive category the number of issues which would be decided by a majority higher than a two-thirds majority.

Revised texts were issued on the voting mechanism in the Council (Article 161 paragraph 7); the procedure for approval of plans of work (Articles 162(2)(j), 163(10), and 165(2)(b)) and creation of a uniform system for adoption of rules, regulations and procedures, discussed above; a new procedure for nomination of members of the Council (Article 161(2)(c)); and other provisions concerning functions of the Assembly and Council (Articles 160 and 162), the Commissions of The Council (Articles 163 and 165) and the provisions concerning the Secretary General of the Authority (Article 166).

The revised texts on decision-making provide for a three-tiered categorization of issues of substance to be decided respectively by a two-thirds majority of Council members present and voting, a three-fourths majority of Council members present and voting, and consensus, which is defined as the absence of any formal objection. Decisions not listed for which no voting majority has been specified in the rules, regulations and procedures of the Authority would be decided by consensus. Plans of work recommended for approval by the Legal and Technical Commission (by a decision-making process to be specified in the rules, regulations and procedures of the Authority), would be deemed approved by the Council unless disapproved by consensus provided that the sponsoring state of the contractor may not be the barrier to consensus. Plans of work not recommended for approval by the Commission would require a three-fourths majority

of Council members present and voting for approval. Decisions of the Commission and objections to approval in the Council would be based solely on the requirements for approval of plans of work specified in Annex III. Other helpful revisions were also made in the text concerning the Commissions of the Council (Articles 163 and 165), although time did not permit thorough discussion of this matter.

While many delegations, including the United States, expressed reservations to the new texts on decision-making, it was generally recognized that no other approach seemed likely to command general support.

The Revised Texts

A summary of the most important revised texts follows:

Article 161(2)(c) - Caucus Nomination

The revised text contains a new Article 161(2)(c), which provides that each group of States Parties to be represented on the Council shall be represented by those members, if any, which are nominated by the group. This provision applies to both the special interest groups in categories (a) through (d) and to the regional groups in category (e) to be represented on the Council pursuant to Article 161(1). The addition of this provision assures that the members of the various interest groups can, in fact, assume that the group interests will be represented adequately by those it selects to represent them.

Article 161(7) - Voting in the Council

The revised text on the voting mechanism in the Council is based on a division of the issues to be decided by the Council into categories, with different majorities specified for each category. Procedural issues, as in the ICNT Rev.2, would be decided by a simple majority of members present and voting. Substantive issues would be divided into three categories according to their sensitivity: the least sensitive substantive issues would be decided by a two-thirds majority of members present and voting; more sensitive substantive issues, by a three-fourths majority of members present and voting; and the most sensitive substantive issues, by consensus. Consensus is defined as the absence of any formal objection, and conciliation procedures are specified in order to try to achieve consensus in the event of such an objection.

The United States, of course, had previously put forward and would have preferred other solutions to the problem of protection in the Council of our major economic interests. The device of decision by consensus on most sensitive issues poses greater danger for paralysis of the Council than previous proposals for chambered voting or, as advanced by the United States, a vote based on shares of production and consumption of the types of minerals derived from the seabed accounted for by members of the Authority. Nevertheless, it became apparent that no other approach, as previously noted, seemed likely to command general support.

Considerable controversy arose in deciding which matters would be placed in the various categories, with the developing countries pressing for most matters to be in the two-thirds category and the United States and other western industrialized countries seeking to have a large number of issues in either the consensus category or the three-fourths category. The texts place in the consensus category three items -- the adoption of necessary and appropriate measures in accordance with Article 150(g) to protect against adverse economic benefits specified therein (Article 162(2)(l)); the adoption of the rules, regulations and procedures of the Authority (Article 162(2)(n)); and adoption of amendments to Part XI. Most of the remaining issues were placed into the three-fourths category. While the list is the product of a major effort to accommodate and balance the views of all concerned groups, it was, of course, impossible to satisfy all delegations and some further shifts of issues among categories may occur at the next session.

It should also be noted in this connection that in the process of drawing up the list, changes were made in the statement of several functions of the Council and Assembly, including Article 162(2)(a) and (k), as noted above, and Article 160(2)(n) (formerly (2)(c)). The latter change was intended to clarify that any decision by the Assembly to assign to an organ of the Authority any question or matter falling within the competence of the Authority which has not previously been assigned, must be in accordance with the rules, regulations and procedures of the Authority.

Two other important and difficult elements of the package were the question of the majority required for residual issues not listed in any of the three categories of substantive issues and the question of resolving disputes as to the category into which an issue falls. The revised text provides that decisions on residual issues shall be

taken in accordance with the rules, regulations and procedures of the Authority if specified therein, and if not specified therein, then under whichever voting rule is decided by consensus. When a question arises as to whether an issue falls within the simple majority, two-thirds majority, three-fourths majority or consensus category, the question shall be treated as falling within the category requiring the higher or highest majority as the case may be, unless otherwise decided by the Council by the said majority.

Finally, it should be noted that in paragraph 7(c), the reference to the time period for which emergency orders may be issued under Article 162(2)(v) to prevent serious harm to the marine environment arising out of activities in the Area has been changed from 10 (as specified in the so-called "Brennan Text" of August 1979) to 30 days. In addition, the United States Delegation is considering whether a distinction should be made between emergency orders for suspension of operations and emergency orders for adjustment of operations, and, in particular, whether the 30-day period should apply in the case of an emergency order for the adjustment of operations.

Article 162(2)(1) - Approval of Plans of Work

Despite the incorporation into the text of the split contracting system, under which approval of plans of work no longer includes allocation of a production authorization, negotiation of the procedure for approval of plans of work proved extremely difficult. Controversy arose over the procedure to be followed in both the Legal and Technical Commission and the Council.

The revised text has two elements. First, if the Commission recommends the approval of a plan of work, it shall be deemed to have been approved by the Council unless a Council member objects in writing within 14 days alleging non-compliance with the requirements of Annex III, Article 6. In the event of such an objection, recourse is provided to the conciliation procedure specified in Article 161(7), which calls for a report within 14 days by the Conciliation Committee. If the objection is still maintained, the plan of work shall be deemed to have been approved by the Council unless the Council disapproves it by consensus among its members, excluding the state or states, if any, making the application or sponsoring the applicant.

If, on the other hand, the Commission recommends disapproval of a plan of work or does not make a recommendation, the Council may decide to approve the plan of work by a three-fourths majority of members present and voting provided that such majority includes a majority of members participating in the session.

The revised text represents a compromise between the developing countries, which considered that a plan of work should have to be approved by a high majority in the Council after being recommended for approval by the Commission, and the United States and other western industrialized countries which considered that it should be made difficult for the Council to disapprove a plan of work. The preference of the United States Delegation was a system under which the Commission would review a plan of work without making a recommendation and the plan of work would be deemed approved by the Council unless disapproved. The Group of 77, however, argued persuasively that if it is made difficult for the Council to disapprove a plan of work by specifying a high majority for Council disapproval and a presumption in favor of approval, there should at least be a requirement for recommendation of approval by the Commission. The resulting text seeks to accommodate the concerns of both groups as well as the concerns of the Eastern Socialist countries. The question of the decision-making procedures in the Commission pursuant to Article 163(11) is to be decided by the rules, regulations and procedures of the Authority.

It should be noted in this connection, that several improvements were made in the texts of Articles 163 and 165 concerning the Commissions, and, in particular, the Legal and Technical Commission, as discussed below. These improvements afford additional protections in the process of approval of plans of work. The United States Delegation will be giving further consideration prior to the Tenth Session of additional ways to better safeguard the legitimate rights of duly sponsored applicants during the approval process.

Article 163 - Organs of the Council

The revised text adds to paragraph 3 on the qualifications of members of the Commissions, a requirement that in submitting

nominations for the Commissions, States Parties shall bear in mind the need to submit candidates of the highest standard of competence and integrity with qualifications in relevant fields. The terms of members of the Commissions specified in paragraph 7 were also increased from three to five years to enhance their independence. In addition, paragraph 8 now contains a provision prohibiting conflicts of interest by members of the Commissions and requiring the protection by members of the Commissions of proprietary data or other confidential information.

Article 165 - The Legal and Technical Commission

A provision has been added to paragraph 2(b) to require that in reviewing plans of work, the Commission shall base its recommendations to the Council solely on the grounds stated in Annex III and shall report fully thereon to the Council. This provision helps assure that the Commission will indeed make its decisions on technical rather than political grounds and that adverse decisions can be appealed under the dispute settlement procedures of the Convention.

Article 166 - The Secretary General

The revised text makes clear that the residual functions of the Secretary General referred to therein are administrative functions entrusted to him by the organs of the Authority and that the Enterprise cannot use him and his staff to supplement its own staff.

COMMITTEE II

Overview

Committee II, under the Chairmanship of Ambassador Andres Aguilar, of Venezuela, held only one meeting during the second half of the Ninth Session and that to review certain Drafting Committee recommendations. Nevertheless, intensive consultations took place among interested states in an effort to deal with issues of particular concern to one or more states in the Conference. Notable among these outstanding issues, as discussed more fully below, was the question of the delimitation of maritime boundaries between opposite and adjacent states. Despite an earnest effort on the part of the interested states, they did not succeed in reaching a final solution at this Session, although the outlook for resolution of the problem was enhanced. Other issues included small changes to Article 42, desired by Spain and supported by the major maritime countries, a proposal made by Canada and Argentina with respect to stocks of fish that are to be found both within and beyond the limits of the exclusive economic zone, and a declaration regarding the continental shelf off Sri Lanka setting forth an exception from the limits in Article 76 in part of the Bengal Bay area, because of its peculiar shelf characteristics. With respect to this latter issue, it is anticipated that this declaration will be appended to the Final Act of the Conference.

The informal activity related to Committee II was successful in consolidating previous gains and compromises with respect to the texts under its jurisdiction, providing time for negotiating the final few issues, and in keeping some delegations from reopening sensitive issues which could result in making the entire package unacceptable to many states in the Conference. Exemplary of the latter category was the attempt by a number of States to generate support for an amendment to Article 21 to require prior authorization and notification for warship transits through the territorial sea. This proposal was completely rejected by the major maritime powers and others as a Conference breaker, which cannot be permitted. Some of

the sponsors of the proposal recognize that they cannot succeed and realize the burden that they would bear for destroying the entire treaty if they press the amendment.

The Spanish amendments to Article 42 and the Argentine and Canadian concerns regarding fish were not included in the Draft Convention although no objections were stated to the substance of the Spanish changes. Procedural problems stymied the adoption of the Article 42 amendments at this time.

Stocks of Fish Occurring Both Within and Beyond the Exclusive Economic Zone

Argentina and Canada continued to press their position in favor of strengthening Article 63 with respect to the conservation of the same stock or stocks of fish which occur both within and beyond the economic zone. Their position which favored the coastal state in the area beyond 200-miles caused difficulties for many delegations concerned about expanding coastal state jurisdiction. In addition, both countries wanted to clarify the applicability of the dispute settlement procedures, including provisional measures.

While it was clear that any approach which included the expansion of coastal state jurisdiction would not be acceptable to the Conference as a whole, it appeared initially that an approach which focused on dispute settlement would have some reasonable chance of success. The negotiations on this issue were somewhat protracted, and the initial acquiescence of certain states in a much scaled down proposal turned into opposition at the end of the Session. Thus, no new text was included in the Draft Convention. It seems clear, in any case, that the provisions for the compulsory and peaceful settlement of disputes are applicable to situations where actions are taken beyond 200-miles that are in violation of the applicable international standards regarding conservation, and this includes the power to prescribe provisional measures under Article 290 where necessary to insure conservation.

It should be noted that because resolution of this issue was in part tied by its sponsors to other issues in

Committee II, including the suggested non-controversial drafting changes to Article 42, a complex procedural tangle resulted. Moreover, certain states believe that Committee II, except for the principles regarding delimitation of offshore boundaries, should be closed as soon as possible and that no substantive issues should be injected at this late date. Nevertheless, the question of conforming the text of Article 63(2) with that of Article 117 merits further study since both provisions may apply to the same fishing activities.

Delimitation of Maritime Boundaries

During the Geneva session, negotiations were carried on between the group of states favoring the equidistance line (supporters of NG 7/2) and the group favoring equitable principles (supporters of NG 7/10). These negotiations were publicly conducted by nine representative states from each side, with meetings co-chaired by Ireland and Spain. The procedural problem of identifying the precise text which would be accepted as a basis for negotiation was avoided by focusing the debate rather upon the elements of the problem. Hence, it was possible to have a full discussion of the meaning of international law and its relevance to the problem, such as the kinds of circumstances which might be taken into account when delimiting boundaries. While these debates produced no concrete formula, they served to clarify misunderstandings which delegations on each side of the debate may have had concerning the positions of those on the other.

Following the general discussions, more intensive negotiations were carried out in private consultations, resulting in various draft texts. While none of these proved entirely acceptable, it was encouraging that negotiations were carried out with such intensity. It appeared by the end of the Session that a good start had been made toward a final solution that might make the eventual treaty more acceptable to a substantial number of delegations which might otherwise feel compelled to seek a reservation on the issue. In this regard, the provision on reservations in the final clauses contains a footnote specifically noting that the final outcome of delimitation negotiations might include the possibility of reservations on that issue. On the other hand, it was somewhat disappointing that so much time was spent discussing the procedures to be followed that true negotiations did not begin until so late in the Session that tangible results were difficult to obtain.

COMMITTEE III

The conclusion reached this spring in New York that Committee III had completed substantive negotiations on the issues under its jurisdiction -- marine pollution, marine scientific research and transfer of technology -- was confirmed during this resumed Ninth Session of the Conference. No substantive negotiations were undertaken, and, with few exceptions, no delegation seriously proposed that substantive negotiations be resumed.

The major activity of the session was a series of meetings to examine drafting changes prepared by Chairman Yankov and the Secretariat. The changes by and large were of a drafting nature, although a limited number had substantive effects. Of the 169 changes proposed, 135 were accepted by the Committee. About five amendments were proposed from the floor but only two were accepted. The Chairman prevented reopening substantive negotiations by applying the rule that no change would be adopted over the objections of any single delegation. Although he held open the possibility that the Committee might examine other drafting suggestions at a future date, he left no room for doubt that the present texts of Parts XII-XIV will become the texts of the Convention.

The major problem that arose was related to the selective incorporation of Drafting Committee harmonization proposals, which defeats the purpose of such proposals, and can result in abuse of the process for substantive ends. These new problems will have to be resolved by the Drafting Committee, which in the future may have to present harmonization suggestions on each point as a package.

INFORMAL PLENARY

General Provisions

The Informal Plenary, chaired by President Amerasinghe, met eight times to consider General Provisions. Five articles gained widespread support and were incorporated in the Draft Convention.

The following articles dealing with good faith and abuse of rights, peaceful uses of the seas, and disclosure of information, were considered as a package and accepted by the Informal Plenary:

Article 300

Good Faith and Abuse of Rights

The States Parties to this Convention undertake to discharge in good faith the obligations entered into in conformity with this Convention, and to exercise the rights, jurisdictions and freedoms recognized in this Convention in a manner which would not constitute an abuse of rights.

Article 301

Peaceful Uses of the Seas

In exercising their rights and performing their duties in accordance with the provisions of this Convention, all States Parties shall refrain from any threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the principles of international law embodied in the Charter of the United Nations.

Article 302

Disclosure of Information

Without prejudice to the right of any State Party to resort to the procedures for the settlement of disputes provided in this Convention, nothing in this

Convention shall be deemed to require a State Party, in the fulfillment of its obligations under the relevant provisions of this Convention, to supply information the disclosure of which is contrary to the essential interests of its security.

By presenting these articles as a package, it was made clear by the first article that the third article may not be abused. This is the point made in the report of the President where he emphasizes that it was understood that the third article does not detract from obligations under the Convention.

Chile pressed a proposal to the effect that the principle of the common heritage of mankind was a rule of jus cogens, i.e., a peremptory norm of international law. While many less developed states favored the proposal, several states observed that it raised serious legal questions, including the impossibility of creating a rule of jus cogens in the manner suggested, as well as the need to consider other principles, including freedom of navigation and overflight, transit passage through straits, and the duty to protect the marine environment as equally entitled to such status. At the same time, no one maintained that the parties to the Convention could enter into agreements in derogation of the principle set forth in Article 136. This is reflected by a new paragraph 6 in Article 305 of the final clauses which provides:

The States Parties to this Convention agree that there can be no amendments to the basic principle relating to the common heritage of mankind set forth in article 136 and that they shall not be party to any agreement in derogation thereof.

The Informal Plenary considered the question of archeological objects. Initially a proposal that would establish coastal state sovereign rights, or alternatively jurisdiction, over such objects on the continental shelf was considered, but it was rejected because it upset the balance between the rights and obligations of coastal states and other states in the economic zone and the continental shelf. A compromise was struck and accepted by consensus as follows:

Article 303

1. States have the duty to protect archaeological objects and objects of historical origin found at sea, and shall cooperate for this purpose.

2. In order to control traffic in such objects, the coastal state may, in applying article 33, presume that their removal from the seabed in the area referred to in that article without the approval of the coastal state would result in an infringement within its territory or territorial sea of the regulations of the coastal state referred to in that article.

3. Nothing in this article affects the rights of identifiable owners, the law of salvage or other rules of admiralty, or laws and practices with respect to cultural exchanges.

4. This article is without prejudice to other international agreements and rules of international law regarding the protection of archaeological objects and objects of historical origin.

Paragraph 2 refers to the power of the coastal state, in a contiguous zone extending up to 24 miles from its coast, to take measures to prevent and punish infringement of its customs, fiscal, immigration or sanitary regulations in its territory or territorial sea.

Questions relating to salvage, title, and other private law matters are not affected by this article. The coastal state power granted by this article, is, moreover, both meaningful and circumscribed in a manner that addresses the real problem faced, particularly in the area of the Mediterranean Sea.

The Informal Plenary accepted the following text to emphasize that the Law of the Sea text does not address all of the questions related to responsibility and liability under international law.

Article 304

The provisions of this Convention regarding responsibility and liability for damage are without prejudice to the application of existing rules and the development of further rules regarding responsibility and liability under international law.

This text was accepted on the tacit understanding that it facilitated acceptance of the Convention, including the straits provisions, by the Spanish and Moroccan delegations and might be removed if this proved not to be the case.

A proposal by Ecuador on use of terms and a proposal by Turkey on the application and interpretation of the Convention were not accepted.

Dispute Settlement

The Conference completed substantive negotiations on the dispute settlement portions of the text. No substantive changes were made in these provisions. The Informal Plenary did consider and adopt a proposal by the President to restructure Part XV.

The restructured text emphasizes that while in some disputes parties will be obliged to submit to arbitral or judicial procedures entailing a binding decision, in others the parties will be obliged to submit to a procedure leading to a non-binding report, i.e., compulsory conciliation. The latter category embraces disputes relating to certain economic zone fishery issues, certain marine scientific research matters, and maritime boundary delimitation. The revised text divides Part XV into three sections -- one covering the procedures to which all disputes are subject as a preliminary step, one prescribing procedures for binding decisions and one for conciliation.

The revision also includes a new Section 2 to be added to Annex V (conciliation). This section incorporates the procedural machinery appropriate to the special use of conciliation under the Convention. Notable in this section are provisions which allow the conciliation to proceed regardless of the cooperation of the "defendant" party. Another provision makes clear the conciliation commission's jurisdiction to decide questions of its own competence.

Most of the dispute settlement portion of the text may now be regarded as closed. The Informal Plenary recognized, however, that some desirable changes in Article 298 may become possible after the conclusion of the delimitation negotiations. Professor Wuensche announced his intention to consider a few small issues in Section 6 of Part XI at the Tenth Session, and, of course, further small drafting changes may be required in Part XV, or associated Annexes.

FINAL CLAUSES

As a result of intensive work in the Informal Plenary, the substantive texts of the final clauses are in essence complete. This is a substantial achievement by the President of the Conference in light of the controversial nature of some of the provisions that emerged at the end of the New York session from the Group of Legal Experts in document FC/20, which formed the initial basis of negotiation at the Geneva session.

At the start of the session, the President of the Conference announced that the question of participation in the Convention was best deferred. Accordingly, there was no debate or drafting by the Conference on various proposals to allow entities other than fully independent states to become party. Thus the Conference will have to deal at the next session with the legal issues necessary to accommodate participation by the European Community and associated states such as those that emerge from the Trust Territories of the Pacific Islands as well as the Cook Islands and Niue, while fending off efforts to exploit the Convention for the purely political issues of dependencies and liberation movements.

The President also postponed further consideration of the resolution on the Preparatory Commission and, with it, the question of preparatory investment protection. These will be the major issues facing the next session.

Entry into Force of the Convention

Two problems were posed with respect to entry into force of the Convention:

- (1) the number of ratifications needed, and
- (2) the question of composing the first Council of the Seabed Authority if the initial States Parties were insufficient to fulfill the requirements of Article 161 regarding different categories of states.

With positions on the first issue generally divided between 50 and 70, a compromise on 60 ratifications for entry into force emerged naturally.

It was recognized that the second issue was closely connected to the negotiations on the Council. Accordingly, the President sent a letter to the Chairman of the First Committee requesting that Committee's advice. Deeply engaged in substantive negotiations, the First Committee recommended no change in the text pending further negotiations on the matter. Thus the existing text retains the proposal of the Chairman of the Group of Legal Experts that the first Council shall be constituted in a manner consistent with the purpose of the article on composition of the Council, if its provisions cannot be strictly applied. In this regard, the new text extends from six to twelve months the delay in entry into force after the necessary number of ratifications have been deposited, thus giving additional states time to ratify and perhaps thereby avoiding or reducing the problem.

The text provides that the rules, regulations and procedures drafted by the Preparatory Commission will apply provisionally from the date of entry into force of the Convention until the Authority itself adopts rules, regulations and procedures. This provision is integral to the package settlement that emerged in the First Committee; it is essential if states are to understand what it is they are ratifying and if the Authority is to function when the Convention enters into force.

Reservations

Since the Convention is an overall "package deal" reflecting different priorities of different states, to permit reservations would inevitably permit one state to eliminate the "quid" of another State's "quo." Thus there was general agreement in the Conference that in principle reservations could not be permitted.

There was also agreement on a provision allowing declarations or statements that do not purport to exclude or to modify the legal effect of the provisions of the Convention. At the same time, it was recognized that in certain very limited and specific instances, a substantive article might itself permit reservations. Thus, although not

strictly a question of reservations, Article 298 on optional exceptions to dispute settlement itself authorizes certain defined exceptions to the general requirements regarding dispute settlement. As the footnote in the text indicates, the most frequently mentioned possibility of a specific provision allowing reservations concerns the provision regarding delimitation of the economic zone and continental shelf between states with opposite or adjacent coasts. Whether or not this comes to pass will presumably be known at the conclusion of negotiations on delimitation.

There was some scattered dissent to the general view that reservations should be prohibited in principle. In most cases, this dissent seemed to be merely for the record or in order to bring pressure to bear on other substantive negotiations, particularly those on delimitation.

Relation to Other Conventions

Article 311 deals with the relation between the Law of the Sea Convention and other treaties, and draws heavily on the rules on this subject set forth in the Vienna Convention on the Law of Treaties. This article contains the new clause mentioned above which specifies that there can be no amendments to the basic principle of the common heritage of mankind. This is in essence a particular application of the general rule set forth in this Article. It emerged after it had become clear that there could be no agreement on any provision, such as that proposed by Chile, dealing with peremptory norms of international law.

Amendments

After very extensive work, the new text rationalizes the amendment system. It makes clear that all amendments to the Convention are subject to ratification or accession after their adoption. It also distinguishes between amendments relating to First Committee matters (amendments relating to "activities in the Area") and other amendments.

Amendments that do not relate to "activities in the Area" can be adopted at a conference of the parties, which could be called by a majority of the parties no sooner than ten years after entry into force of the Convention. Alternatively, they can be adopted at any time by a simplified procedure in which the amendment is circulated to all States Parties, and is considered adopted if there are no objections within 12 months. In either case, such an amendment would enter into force for states ratifying or acceding to it once instruments of ratification or accession are deposited by two-thirds of the States Parties.

Amendments relating to deep seabed matters are treated differently. Aside from the review conference convened under Article 155, they can be adopted in identical form by both the Council and the Assembly of the Authority at any time. Since it is generally not possible to have two different sets of legal provisions governing deep seabed mining, deep seabed mining amendments would enter into force for all States Parties one year after they have been ratified by three-fourths of States Parties. The one-year time period was included to permit states that did not favor the amendment to take action once it was clear the amendment was entering into force. It was recognized that under the constitutional systems of some states the choice would then be between ratifying the amendment and denouncing the Convention.

Amendments regarding the Law of the Sea Tribunal (Annex VI) also enter into force for all parties once ratified by three-fourths. Such amendments can only be adopted, pursuant to the new text of article 42 of Annex VI, in the Council and Assembly of the Seabed Authority for seabed matters, or by consensus of all the parties for other matters.

Denunciation

The text now provides that a state may denounce the Convention at any time by giving one year's notice. A five-year freeze on denunciation contained in earlier texts was eliminated, it being recognized that it was unlikely in practice that states would ratify a Convention of this sort with the intention of denouncing it shortly thereafter. The technical provisions dealing with the effects of denunciation were drawn largely from the Vienna Convention on the Law of Treaties.

Authentic Texts

The final clauses contain a standard provision specifying that the texts of the Convention in all official languages are equally authentic. In this connection, the United States statement in plenary on August 26, 1980, contained the following sentence: "Since virtually all of the original texts of the ICNT and its predecessors were drafted in English, the Conference will wish to review the proposed Article 313 of Document FC/21/Rev.1 in light of the further work of the Drafting Committee." The intersessional meeting of the Drafting Committee early next winter is expected to devote the major portion of its time to article-by-article textual review and concordance in preparation for completion of the Convention.

DRAFTING COMMITTEE

The coordinators of the six language groups of the Drafting Committee, meeting informally with the Chairman, devoted most of their time to harmonization problems. Relatively few new recommendations emerged from the process. At the end of the session it seemed generally understood that the work of the coordinators and the Committee as a whole would be most productive if they now proceeded directly to an article-by-article review of the text.

Most of the language groups, meanwhile, devoted themselves to textual review and are now well along in the process. Each group has proceeded independently on the basis of its own language version of the text. These texts already differ among themselves to some extent. This procedure has thus begun to suggest the probable difficulty of conforming the six different language versions with the original English which will ultimately be necessary.

PREPARATORY INVESTMENT PROTECTION ("PIP")

Not unexpectedly, early in the session it became clear that the passage of national seabed mining legislation by the United States and the FRG had complicated the negotiation of the protection of interim investments. Indeed, the G-77 reiterated its position in opposition to deep seabed mining in the absence of a Law of the Sea treaty, while the United States and several developed states reiterated their previously stated views. A United States-sponsored meeting on the subject failed to attract a significant number of G-77 participants. However, a number of useful small group discussions did take place during the session. While representatives of the seabed mining industry continued to emphasize the inadequacies of the original "PIP" concept, attention was also drawn to the reserved side of the system. The G-77 are plainly concerned that treaty provisions aimed at protecting the continuity of operations of existing private ventures would serve to move these activities even farther out in front of the Enterprise than they are already. The USSR also indicated a fear that under a "PIP" arrangement, early applicants could corner the prime sites to the disadvantage of later entrants, although their concern presumably has been reduced by the addition of new anti-monopoly language to Article 6 of Annex III.

Under the circumstances, the Conference leadership decide that the "PIP" issue, together with the Preparatory Commission itself, should be carried over to the next negotiating session. An active program of consultations is slated for the intersessional period.

APPENDIX 2

PART III OF THE DRAFT CONVENTION, EXCERPT OF LANGUAGE REGARDING PROCEDURES FOR SEALANE SECURITY, SUBMITTED IN RESPONSE TO INQUIRY BY REPRESENTATIVE PAUL FINDLEY

PART III. STRAITS USED FOR INTERNATIONAL NAVIGATION

SECTION 1. GENERAL

Article 34

Legal status of waters forming straits used for international navigation

1. The régime of passage through straits used for international navigation established in this Part shall not in other respects affect the status of the waters forming such straits or the exercise by the States bordering the straits of their sovereignty or jurisdiction over such waters and their air space, bed and subsoil.

2. The sovereignty or jurisdiction of the States bordering the straits is exercised subject to this Part and to other rules of international law.

Article 35

Scope of this Part

Nothing in this Part shall affect:

- (a) Any areas of internal waters within a strait, except where the establishment of a straight baseline in accordance with article 7 has the effect of enclosing as internal waters areas which had not previously been considered as such;
- (b) The status of the waters beyond the territorial seas of States bordering straits as exclusive economic zones or high seas; or
- (c) The legal régime in straits in which passage is regulated in whole or in part by long-standing international conventions in force specifically relating to such straits.

Article 36

High seas routes or routes through exclusive economic zones through straits used for international navigation

This Part does not apply to a strait used for international navigation if a high seas route or a route through an exclusive economic zone of similar convenience with respect to navigational and hydrographical characteristics exists through the strait.

SECTION 2. TRANSIT PASSAGE

Article 37

Scope of this section

This section applies to straits which are used for international navigation between one area of the high seas or an exclusive economic zone and another area of the high seas or an exclusive economic zone.

Article 38
Right of transit passage

1. In straits referred to in article 37, all ships and aircraft enjoy the right of transit passage, which shall not be impeded, except that, if the strait is formed by an island of a State bordering the strait and its mainland, transit passage shall not apply if a high seas route or a route in an exclusive economic zone of similar convenience with respect to navigational and hydrographical characteristics exists seaward of the island.

2. Transit passage is the exercise in accordance with this Part of the freedom of navigation and overflight solely for the purpose of continuous and expeditious transit of the strait between one area of the high seas or an exclusive economic zone and another area of the high seas or an exclusive economic zone. However, the requirement of continuous and expeditious transit does not preclude passage through the strait for the purpose of entering, leaving or returning from a State bordering the strait, subject to the conditions of entry to that State.

3. Any activity which is not an exercise of the right of transit passage through a strait remains subject to the other applicable provisions of this Convention.

Article 39
Duties of ships and aircraft during their passage

1. Ships and aircraft, while exercising the right of transit passage, shall:

(a) Proceed without delay through or over the strait;

(b) Refrain from any threat or use of force against the sovereignty, territorial integrity or political independence of States bordering straits, or in any other manner in violation of the principles of international law embodied in the Charter of the United Nations;

(c) Refrain from any activities other than those incident to their normal modes of continuous and expeditious transit unless rendered necessary by force majeure or by distress;

(d) Comply with other relevant provisions of this Part.

2. Ships in transit shall:

(a) Comply with generally accepted international regulations, procedures and practices for safety at sea, including the International Regulations for Preventing Collisions at Sea;

(b) Comply with generally accepted international regulations, procedures and practices for the prevention, reduction and control of pollution from ships.

3. Aircraft in transit shall:

(a) Observe the Rules of the Air established by the International Civil Aviation Organization as they apply to civil aircraft; State aircraft will normally comply with such safety measures and will at all times operate with due regard for the safety of navigation;

(b) At all times monitor the radio frequency assigned by the appropriate internationally designated air traffic control authority or the appropriate international distress radio frequency.

Article 40

Research and survey activities

During their passage through straits, foreign ships, including marine scientific research and hydrographic survey ships, may not carry out any research or survey activities without the prior authorization of the States bordering straits.

Article 41

Sea lanes and traffic separation schemes in straits used for international navigation

1. In conformity with this Part, States bordering straits may designate sea lanes and prescribe traffic separation schemes for navigation in straits where necessary to promote the safe passage of ships.

2. Such States may, when circumstances require, and after giving due publicity thereto, substitute other sea lanes or traffic separation schemes for any sea lanes or traffic separation schemes previously designated or prescribed by them.

3. Such sea lanes and traffic separation schemes shall conform to generally accepted international regulations.

4. Before designating or substituting sea lanes or prescribing or substituting traffic separation schemes, States bordering straits shall refer proposals to the competent international organization with a view to their adoption. The organization may adopt only such sea lanes and traffic separation schemes as may be agreed with the States bordering the straits, after which the States may designate, prescribe or substitute them.

5. In respect of a strait where sea lanes or traffic separation schemes are proposed through the waters of two or more States bordering the strait, the States concerned shall co-operate in formulating proposals in consultation with the organization.

6. States bordering straits shall clearly indicate all sea lanes and traffic separation schemes designated or prescribed by them on charts to which due publicity shall be given.

7. Ships in transit shall respect applicable sea lanes and traffic separation schemes established in accordance with this article.

Article 42
Laws and regulations of States bordering
straits relating to transit passage

1. Subject to the provisions of this section, States bordering straits may adopt laws and regulations relating to transit passage through straits, in respect of all or any of the following:

- (a) The safety of navigation and the regulation of marine traffic, as provided in article 41;
- (b) The prevention, reduction and control of pollution, by giving effect to applicable international regulations regarding the discharge of oil, oily wastes and other noxious substances in the strait;
- (c) With respect to fishing vessels, the prevention of fishing, including the stowage of fishing gear;
- (d) The taking on board or putting overboard of any commodity, currency or person in contravention of the customs, fiscal, immigration or sanitary regulations of States bordering straits.

2. Such laws and regulations shall not discriminate in form or in fact amongst foreign ships or in their application have the practical effect of denying, hampering or impairing the right of transit passage as defined in this section.

3. States bordering straits shall give due publicity to all such laws and regulations.

4. Foreign ships exercising the right of transit passage shall comply with such laws and regulations.

5. The flag State of a ship or aircraft entitled to sovereign immunity which acts in a manner contrary to such laws and regulations or other provisions of this Part shall bear international responsibility for any loss or damage which results to States bordering straits.

Article 43
Navigation and safety aids and other improvements and
the prevention, reduction and control of pollution

User States and States bordering a strait should by agreement co-operate:

- (a) In the establishment and maintenance in a strait of necessary navigation and safety aids or other improvements in aid of international navigation; and
- (b) For the prevention, reduction and control of pollution from ships.

Article 44
Duties of States bordering straits

States bordering straits shall not hamper transit passage and shall give appropriate publicity to any danger to navigation or overflight within or over the strait of which they have knowledge. There shall be no suspension of transit passage.

SECTION 3. INNOCENT PASSAGE

Article 45
Innocent passage

1. The régime of innocent passage, in accordance with section 3 of Part II, shall apply in straits used for international navigation:

- (a) Excluded under article 36, paragraph 1, from the application of the régime of transit passage; or
 - (b) Between an area of the high seas or an exclusive economic zone and the territorial sea of a foreign State.
2. There shall be no suspension of innocent passage through such straits.